HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 30, 2013
83rd Legislature, Number 62
The House convenes at 10 a.m.

Twenty-seven bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

One postponed bill, HB 939 by J. Davis, is on the supplemental calendar for second-reading consideration today. The bill analysis is available on the HRO website at http://www.hro.house.state.tx.us/pdf/ba83R/HB0939.PDF.

Bill Callegari
Chairman
83(R) – 62

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 30, 2013
83rd Legislature, Number 62

SUBJECT: Use of assistance animals in public places

COMMITTEE: Defense and Veterans' Affairs — committee substituted recommended

VOTE: 6 ayes — Menéndez, R. Sheffield, Collier, Farias, Miller, Moody

3 nays — Frank, Schaefer, Zedler

WITNESSES: For — Carol Anderson; Brian East, Disability Rights Texas; Adan Gallegos; (*Registered, but did not testify:* James Cunningham, Texas Coalition of Veterans Organizations and Military Officers Association of America; Deborah Giles; James Grayson; Carlos Higgins, Austin Military Officers Association; Patrick Hogan; Philip Lindner, National Guard Association of Texas; Morgan Little, Texas Coalition of Veterans Organizations; CarrieAnn Partch)

Against — (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Businesses; Mike Hull, Texans for Lawsuit Reform)

On — Glen Garey, Texas Restaurant Association

BACKGROUND: Human Resources Code, sec. 121.002 defines an assistance animal as an animal specially trained or equipped to help a person with a disability and used by a person who has satisfactorily completed a specific and approved training course. Chapter 121 also defines a public facility and stipulates the kinds of mental and physical disabilities that qualify someone as a person with a disability.

Penalties for anyone who discriminates against a person with a disability and for anyone who falsely uses an animal for assistance are included in ch. 121.

Health and Safety Code, ch. 437 governs the regulation of restaurants, retail food stores, mobile food units, and roadside food vendors.

DIGEST: Under CSHB 489, restaurants, retail food stores, and other food establishments and vendors could not deny in certain circumstances an assistance animal entry into an area of the establishment that was open to

customers and was not used to prepare food. The assistance animal would have to be accompanied and controlled by a person with a disability or in training and controlled by an approved trainer.

If the assistance animal were accompanied by a person whose disability was not readily apparent, a staff member of the establishment could inquire only about whether the assistance animal was required because the person had a disability and what type of work the animal was trained to perform.

The bill would remove specific training requirements and add post-traumatic stress disorder and intellectual or developmental disability to the conditions that would qualify a person as having a disability.

The bill would amend the Health and Safety Code and define an assistance animal as providing help with specific tasks directly related to a person's disability, which could include:

- guiding a person who had a visual impairment;
- alerting a person who had a hearing impairment or was deaf;
- pulling a wheelchair;
- alerting and protecting a person who had a seizure disorder;
- reminding a person who had a mental illness to take prescribed medication; and
- calming a person who had post-traumatic stress disorder.

CSHB 489 would cap the fine for discriminating against a person with a disability at $300 and add 30 hours of community service as part of the penalty for the misdemeanor offense. It would raise the fine to not more than $300 from not more than $200 for someone who falsely presented an animal as an assistance animal and would add 30 hours of community service to the penalty for the misdemeanor offense. The penalties for discriminating against a person with a disability who had an assistance animal and for anyone who falsely represented that they had an assistance animal would apply only to an offense committed on or after January 1, 2014.

The bill increases the presumption of damages for a person with a disability deprived of their civil liberties to $300 from $100.

The governor would proclaim October 15 of each year as White Cane Safety and Assistance Animal Recognition Day. It would specify the

comptroller and the secretary of state among the state agencies that had to inform the public through mail at least once a year about the policies related to persons with disabilities.

The bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 489 would update and provide uniformity and clarity in the Human Resources and Health and Safety codes as they relate to assistance dogs used by people with disabilities. The bill would help eliminate ambiguity in the law and increase awareness about additional disabilities and the use of assistance animals.

Many people with disabilities such as post-traumatic stress disorder or an intellectual disability who use assistance animals are denied the same legal protections afforded to other people with disabilities. Addressing this problem is important as two recent wars have yielded a wave of veterans who grapple with disabilities that often are not fully apparent or appreciated by the public. The bill also would establish reasonable provisions that defined an acceptable inquiry about a person's disability when the person had an assistance animal.

Texas does not provide protection for a vast number of people with disabilities who use service animals in eateries, food stores, and other areas of public spaces where food is not prepared. The bill would establish some penalties for violators, but they would not be harsh and would include community service that would benefit an organization that served people with disabilities. The bill also would raise the threshold for the presumption of damages for someone who was deprived of his or her civil liberties. This stipulation would address a concern about the bill prompting frivolous lawsuits. CSHB 489 would penalize people who represented that they had a disability and a qualified assistance animal, helping to prevent people from taking advantage of the rights afforded to those who do have a disability. The bill would spell out guidelines for inquiries about assistance animals and require the governor and state agencies to inform the public about its provisions. The requirements on businesses, employees, or anyone else would not be onerous.

OPPONENTS SAY:

CSHB 489 would unfairly penalize many business owners and their employees who would simply try to verify that an animal was being used to assist a person with a disability. The bill would not provide leeway for businesses and employees to make a fair inquiry about the animal and

would rush to penalize anyone not careful enough to adhere to these heightened restrictions. The provisions in the bill would require an impractical amount of training that businesses cannot afford.

In addition, the bill is not needed because a person may seek recourse for civil rights discrimination in a court of law.

NOTES:

The committee substitute differs from the bill as filed by:

- adding to the Health and Safety Code guidelines for inquiries of people with disabilities who are using assistance animals and definitions of assistance animals;
- adding to the Human Resources Code the definition of an assistance animals;
- adding developmental disability to the list of disabilities in the Human Resources Code;
- deleting certain requirements of a trainer of an assistance animal;
- stipulating the threshold of presumed damages would be $300 in order for a person with a disability deprived of their civil liberties to seek a cause of action in court; and
- establishing new penalties for anyone who falsely claimed to have an assistance animal for a disability;

SUBJECT: Delayed parole, no mandatory supervision for repeat intoxication offenses

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield

0 nays

1 absent — Toth

WITNESSES: For — Bill Lewis, Mothers Against Drunk Driving; Jennifer Tharp, Comal County Criminal District Attorney; Patrick Wilson, Ellis County and District Attorney Office; (*Registered, but did not testify*: Brian Eppes, Tarrant County District Attorney's Office; John Healey, Fort Bend County District Attorney; Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify*: Chris Howe)

On — Bryan Collier, Texas Department of Criminal Justice; Rissie Owens Board of Pardons and Paroles; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association; Bettie Wells, Board of Pardons and Paroles)

BACKGROUND: **Consideration for parole**. Under Government Code, sec. 508.145(f), in general, inmates are considered for release on parole when their actual calendar time served plus good conduct time equals one-fourth of their sentences or 15 years, whichever is less.

Government Code, sec. 508.145(d)(1) creates an exception to this and makes inmates serving sentences for specified violent and serious crimes ineligible for release on parole until their time served, without consideration of good conduct time, equals one-half of their sentence or 30 years, whichever is less, with a minimum of two years.

Mandatory supervision. Government Code, sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced.

However, Government Code sec. 508.149(b) establishes exceptions to this requirement and prohibits release on mandatory supervision if a parole panel finds that an inmate's good conduct time is not an accurate reflection of his or her potential for rehabilitation and that the inmate's release would endanger the public. Due to this provision, the program is sometimes called discretionary mandatory supervision.

Government Code, sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or had been previously convicted of specific crimes listed in the section.

Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice (TDCJ).

Intoxication and alcoholic beverage offenses. Penal Code, ch. 49 governs intoxication and alcoholic beverage offenses, including driving while intoxicated (DWI). Sec. 49.09 allows penalties for DWI and other offenses in chapter 49 to be enhanced to the felony level, including allowing third-time DWI offenses to punished as third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000).

Under general provisions for repeat and habitual felony offenders in Penal Code, sec. 12.42, for a person who has two previous felony convictions — including DWI felony convictions — a subsequent offense can be punished by life in prison or a term of 25 years to 99 years.

DIGEST:

CSHB 517 would make persons serving sentences of 25 years or more for Penal Code, ch. 49 intoxication or alcoholic beverage offenses ineligible for parole until their actual time served, without consideration of good conduct time, equaled one-half of their sentence or 30 years, whichever was less, with a minimum of two years.

The bill also would add these offenses to the list of crimes for which release on mandatory supervision was prohibited.

The bill would take effect September 1, 2013, and would apply to only to offenses committed on or after that date.

SUPPORTERS

CSHB 517 would ensure that people who commit repeat, dangerous

SAY:

intoxication offenses serve an adequate amount of time in prison before being considered for, and possibly released on, parole, and that these offenders would not be released from prison under the state's mandatory supervision program. These changes would serve to deter and more appropriately punish these crimes and to protect the public.

The need for these changes was brought to light by egregious cases of offenders being eligible for parole or being released on parole inappropriately early. One such offender, after receiving a life sentence for DWI, became eligible for parole after eight years and was paroled after 11 years, after which he reoffended and received another life sentence. In another case, an offender received a life sentence after multiple DWIs and was eligible for parole after about seven years.

Under current law, DWI offenders generally fall under standards that make them eligible for parole when their actual calendar time served plus good conduct time equals the lesser of one-fourth of their sentence or 15 years. This can result in these offenders being eligible for parole after serving only 10 percent to 15 percent of their sentences, an inadequate punishment for these crimes.

CSHB 517 would address this issue by requiring these offenders to serve at least half of their sentences, without good conduct time, before being considered for parole. This would be an appropriate extension of the state's policy that requires other dangerous offenders who committed serious crimes to serve longer terms before being parole eligible.

The parole board still would have discretion to handle these cases individually and appropriately. The bill would delay only the date on which they were considered for parole. When the cases were considered, the board could continue as it does under current law to release the offender on parole and decide any conditions of release or to deny release.

In addition, these offenders currently are eligible for release under the state's mandatory supervision program. Although release under this program can be denied, it can appear to be a presumed release, which requires the parole board to make specific findings to halt the release. By prohibiting release on mandatory supervision, CSHB 517 would recognize that this type of release is inappropriate, given the seriousness of these crimes and the threat to public safety that repeat DWI offenders pose.

CSHB 517 would be narrowly focused on the truly dangerous, habitual DWI felon. Offenders would have to have at least four prior DWI convictions with at least two being felony offenses. These offenders, and those convicted of a limited number of other enhanced intoxication offenses in Penal Code, ch. 49, can be sentenced to life in prison or a term of 25 years to 99 years and would qualify under the bill.

The fiscal note reports no significant cost to the state within the first five years of the bill's implementation. If there were a fiscal impact after that, it would be a proper use of state resources to protect the public by keeping dangerous, repeat felons in prison.

OPPONENTS SAY:

Current law provides an appropriate formula for determining the parole eligibility of offenders described by CSHB 517. Once offenders meet the criteria in current law, they are eligible only for parole consideration, not necessarily release. If the parole board deems it appropriate, it can deny parole and require an offender to remain in prison. It would be best to continue to let the parole board evaluate these offenders on a case-by-case basis when they are eligible for parole, rather than to mandate a delay of the parole eligibility of a group of offenders.

The offenders described by CSHB 517 should remain eligible for mandatory supervision. These are serious offenses, but each case should continue to be considered individually through the mandatory supervision process instead of falling under a blanket provision that works to keep all such offenders out of the program and in prison longer. Being considered for mandatory supervision does not mean that an offender will be released. Offenders can be denied release on mandatory supervision if release would endanger the public and if good conduct time does not reflect an inmate's potential for rehabilitation. These provisions work to keep appropriate offenders from release under the program.

The state should be cautious about mandates that could strain the resources of the criminal justice system in the long term as offenders remain in prison longer.

NOTES:

The committee substitute amended the original bill so that it would apply to those serving a sentence of 25 years or more for intoxication offenses, while the original bill would have applied to certain repeat offenders whose offense was enhanced to a third-degree felony.

SUBJECT: Authorizing a municipality to create a spaceport development corporation

COMMITTEE: Special Purpose Districts — favorable, without amendment

VOTE: 8 ayes — D. Bonnen, D. Miller, Alvarado, Clardy, Goldman, Krause, Stickland, E. Thompson

0 nays

1 absent — Lucio

WITNESSES: For — Tony Martinez, City of Brownsville; *(Registered, but did not testify:* Kippy Caraway, City of Houston; Robert Flores, Texas Association of Mexican American Chambers of Commerce; Jason Hilts, Mario A. Martinez, and Gilberto Salinas, Brownsville Economic Development Council; Keith Stretcher, City of Midland*)*

Against — Jim Allison, County Judges and Commissioners Association of Texas

BACKGROUND: The 76th Legislature enacted legislation allowing local communities to create spaceport development corporations. A county or a combination of one or more municipalities and one or more counties are eligible to authorize the creation of a spaceport development corporation. These corporations have the ability to issue bonds, acquire property, and be exempt from certain taxes to attract private space corporations and their related infrastructure. They also may promote or develop new or expanded business enterprises, educational training, or job training relating to a spaceport and loan money to help fund a spaceport. Spaceport development corporations are governed by a board of seven directors. They have a presiding officer and meet every three months.

A spaceport includes:

- an area intended to be used to launch or land a spacecraft;
- a spaceport building or facility and an area to accommodate it; and
- a right-of-way related to launching or landing area, building, or facility that is appurtenant to a launching or landing area.

DIGEST:

HB 545 would expand the entities eligible to authorize the creation of a spaceport development corporation to include a single municipality.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

The privatization of space is a rapidly developing industry, and several private companies already have developed a presence in the state, such as SpaceX, XCOR, and Blue Origin.

One of the goals the Legislature in 2007 when it authorized spaceport development corporations was to make an area attractive to private space corporations and their related infrastructure. Use of the spaceport development corporation statute should be encouraged by all possible participating entities. This bill would add a single municipality to the list of entities eligible to create spaceport development corporations, giving interested municipalities the autonomy to act.

Concern about competing spaceport development corporations is unfounded because there are few areas of the state that would be conducive to supporting a spaceport. Also, while the privatization of space is developing, there is not enough activity in this are to result in development corporations springing up in the same area.

OPPONENTS SAY:

Allowing a single municipality the authority to create a spaceport development corporation without the cooperation of a county or other nearby municipalities could result in competing development corporations. To avoid competition within the same area, a municipality should be limited to creating a spaceport development corporation in a county where one does not already exist.

NOTES:

A related bill, HB 1791 by J. Davis, would establish limited liability protections and other changes related to space flight activities. On April 24, the House passed HB 2623 by Oliveira, which would restrict access to Boca Chica Beach during spacecraft launches.

SUBJECT: Funding for child care assistance to students at risk of dropping out

COMMITTEE: Public Education — favorable, without amendment

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

1 absent — Huberty

WITNESSES: For — (*Registered, but did not testify:* Jennifer Allmon, Texas Catholic Conference; Portia Bosse, Texas State Teachers Association; Ramiro Canales, Texas Association of School Administrators; Jesus Chavez, Texas School Alliance; Sarah Crockett, Texas Association for Infant Mental Health; Monty Exter, Association of Texas Professional Educators; Ray Freeman, Equity Center; Lindsay Gustafson, Texas Classroom Teachers Association; Dwight Harris, Texas American Federation of Teachers; Anita Jiles, Texas Elementary Principals & Supervisors Association; Janna Lilly, Texas Council of Administrators of Special Education; Louann Martinez, Dallas ISD; Ken McCraw, Texas Association of Community Schools; Jordan Michalik, Texas Association of Goodwills; Susan Milam, National Association of Social Workers/Texas Chapter; Don Rogers, Texas Rural Education Association; Julie Shields, Texas Association of School Boards; Amanda Thomas, Texas Charter Schools Association; Tamara Vannoy, Texas Afterschool Association; Chandra Villanueva, Center for Public Policy Priorities)

Against — None

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: Education Code, sec. 42.152 establishes a compensatory education allotment for students who are educationally disadvantaged as measured by enrollment in the national school lunch program or in a remedial or support program because they are pregnant. Districts receive an adjustment to the basic allotment for each student served under compensatory education.

School districts generally must use the funds for supplemental programs and services designed to improve student performance on state assessments and to help students who are at risk of dropping out stay in school.

DIGEST:

HB 580 would allow school districts to use compensatory education allotment funding to provide child-care services or assistance with child-care expenses for students at risk of dropping out of school because they are parents.

Schools could use the funds to provide child care on campus or to pay for outside day care. Funds also could be used to transport children of students and the students themselves to and from the campus or day care.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 580 would provide school districts with more flexibility in how they used state compensatory education allotment funds to assist students at risk of dropping out of school because of a lack of child care. The bill would add child-care expenses to the categories of items a district could pay for with these funds. School districts would not be required to provide child-care assistance but would have the option to use a portion of state compensatory education funding for that purpose.

Parenthood is a leading cause of school dropout among teen girls. Having access to day care that is dependable, safe, and affordable would allow them to concentrate on their studies rather than worry about finding reliable child care. By permitting districts to use state compensatory education funds for child care, school districts could increase the number of at-risk students who were able to graduate and continue to college or find jobs that allowed them to provide for the needs of their children.

Some districts have been struggling to provide child care since state budget cuts in fiscal 2012-13 ended the Life Skills Program for Teen Parents grant program. In fiscal 2010-11, the Texas Education Agency received $17.7 million for that program, which distributed grants to school districts that agreed to provide local matching funds. Child care was one allowable use for the grants, although the money could not be used only for child care expenses. In fiscal 2012-13, the program received no appropriations.

Some school districts lost up to $400,000 to use toward child care and other needs after the Life Skills program ended. While some districts have continued to provide child care, finding alternative funding has become an onerous task. HB 580 would provide a more reliable source of funding.

OPPONENTS SAY:

Compensatory education funds were designed to provide accelerated reading instruction, mentoring, and other programs that help improve student performance. These funds should not be diverted for child care expenses.

Districts that want to provide child care could find money within their budgets, help students apply for workforce commission grants, or partner with outside sources to continue offering child care.

NOTES:

The companion bill, SB 314 by Uresti, was referred to the Senate Education Committee on February 5.

SUBJECT: Eligibility for special education services due to visual impairment.

COMMITTEE: Public Education — favorable, without amendment

VOTE: 7 ayes — Aycock, Deshotel, Farney, Huberty, Ratliff, J. Rodriguez, Villarreal

0 nays

4 absent — Allen, J. Davis, Dutton, K. King

WITNESSES: For — Sabra Ewing, Belinda Fayard, and Kristen McKay, Alliance of and for Visually Impaired Texans; Richie Flores and Faith Penn, National Federation of the Blind; Elisabeth Freeborn, Texas Parents of Blind Children; Linda Litzinger; Meghan McKay; Jeff Miller, Disability Rights Texas; Karen Whitty; Marjie Wood, Texas Association of the Visually Impaired; (*Registered, but did not testify:* Chase Bearden, Coalition of Texans with Disabilities; Edgenie Bellah, Carlena Miller, Martha Murrell, and Nancy Toelle; Alliance of and for Visually Impaired Texans; Portia Bosse, Texas State Teachers Association; Lauren Dimitry, Texans Care for Children; Rona Statman, The ARC of Texas; Chandra Villaneuva, Center for Public Policy Priorities; and five individuals)

Against — None

On — David Anderson, Texas Education Agency; Cyral Miller, Texas School for the Blind and Visually Impaired; (*Registered, but did not testify:* Mel Fajkus, Department of Assistive and Rehabilitative Services; Gene Lenz, Texas Education Agency)

BACKGROUND: Education Code, sec. 30.002 requires the Texas Education Agency (TEA) to administer a comprehensive statewide plan for educating students with visual impairments up to age 21. Sec. 30.002(e) requires an individualized education program (IEP) of a blind or visually impaired student served by special education to provide a detailed description of the arrangements made to provide the student with orientation and mobility training.

DIGEST: HB 590 would require that a blind or visually impaired student receive an orientation and mobility (O&M) evaluation as part of the student's initial

evaluation for special education services under Education Code, sec. 29.004. A person certified by education commissioner rule as an O&M specialist would conduct the evaluation in various lighting conditions and in a variety of settings, including home, school, community, and unfamiliar settings. A certified O&M specialist would be part of the multidisciplinary team that determined a child's eligibility for special education services.

HB 590 would require that the scope of any school district reevaluation of a child found eligible for special education services on the basis of a visual impairment be determined, in accordance with applicable federal regulations, by a multidisciplinary team including a certified O&M specialist.

The commissioner of education would adopt rules to implement HB 590 by January 1, 2014 and to implement the program by the beginning of the 2014-15 school year.

HB 590 would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 590 would ensure that more students received earlier access to O&M services, increasing their independence at home and school and in the community. This could reduce the need for other costly supports.

O&M training helps visually impaired students master the vital skills necessary for safe movement and independent living. It teaches people with visual impairments how to use a long cane to detect steps, curbs, and obstacles, how to ride a bus independently, and how to use sound and other environmental cues to cross a street and follow a route. Students who are proficient, independent travelers are more likely to become confident, successful adults. The bill would save Texas money over time by reducing the need for O&M services from adult rehabilitation programs.

The Governor's Committee on People with Disabilities supports efforts to increase the number of O&M evaluations being conducted and to ensure that all students with visual impairments receive an O&M evaluation. The bill would provide additional clarity that each child with a visual impairment should receive an O&M evaluation instead of relying on the

teacher of students with visual impairments to make a recommendation as to whether an O&M evaluation was needed.

Visual impairments can be difficult to assess, and teachers may not be aware of a student's needs for O&M services, particularly if the student appears to get around school without any trouble. However, in unfamiliar settings that student may struggle with mobility and could benefit greatly from learning cane skills. Because parents are seldom aware of the scope or benefits of O&M instruction for children, many do not advocate for it.

Infants are taught to develop motor skills for purposeful movement. The provision of early O&M services could alleviate many gait and posture problems and fear of movement that can result when young children go without training. Contrary to an unfortunately common misconception, very young children, including students with multiple disabilities such as deaf-blindness and those with low vision, benefit greatly from early O&M instruction.

As of January 2012, there were 8,968 children from birth to age 21 with visual impairments statewide. Only 56 percent of all eligible children have been evaluated for O&M services in the past three years, and only 35 percent receive services.

While not all students who are evaluated need O&M services, about 1,000 students per year would need a new evaluation under HB 590. An estimated 40 percent of districts have three or fewer students that would need an evaluation, and 76 percent have 10 or fewer. At an average cost of $300 per evaluation, the resulting expense easily could be absorbed by most local early childhood intervention programs and school districts. Federal, state, and local funds for special education services could be used to pay for O&M evaluations.

Some critics have expressed concern that there would not be enough certified specialists available to conduct the evaluations. O&M specialists are required to have a bachelor's degree with a specialty in O&M. To become certified by a national licensing board, individuals must pass an examination. Eleven of the 20 regional service centers have O&M specialists on staff. Statewide there are about 357 certified specialists licensed through the Academy for Certification of Vision Rehabilitation and Education Professionals. Stephen F. Austin State University and Texas Tech University both offer degree programs in O&M and report a

steady stream of applicants and individuals who have completed the training in recent years.

OPPONENTS SAY:

HB 590 would create a costly, unfunded mandate for school districts. While contending that the expense to any individual district would be minimal, data offered by supporters project that the bill would cost at least $300,000 annually. Even this is a low estimate that does not account for the cost of providing services to additional students who would qualify due to the evaluations.

Some rural school districts could have difficulty complying with HB 590 if there were not enough certified O&M specialists available to conduct the evaluations and provide needed services within deadlines prescribed by state and federal law. This could prompt lawsuits against school districts that failed to comply with the evaluation and requirements to provide services.

OTHER OPPONENTS SAY:

HB 590 is unnecessary because state law already requires that IEPs for students with visual impairment contain detailed arrangements for O&M services.

NOTES:

The companion bill, SB 38 by Zaffirini, was reported favorably on April 29 by the Senate Education Committee.

SUBJECT: Allowing counties to provide certain license services

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

1 absent — Kleinschmidt

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Ronnie Keister; John Lee Norman, Garza County; (*Registered, but did not testify:* John Thompson, Polk County; Michael Vasquez, Texas Conference of Urban Counties)

Against — (*Registered, but did not testify:* Claire Wilson James)

On — David Palmer and Michael Terry, Texas Department of Public Safety (*Registered, but did not testify:* Tom Benavides and Jim Kilchenstein, Texas Department of Public Safety)

BACKGROUND: According to the Attorney General opinion GA-0917, the Department of Public Safety (DPS) lacks statutory authority to contract with a county to allow county employees to perform DPS duties relating to the issuance of driver's licenses and personal identification certificates. Similarly, counties lack the statutory authorization to participate in such a program.

DIGEST: CSHB 827 would allow the Texas Department of Public Safety to enter into an agreement with any county commissioners court to allow county employees to provide services relating to the issuance of renewal and duplicate driver's licenses and election and personal identification certificates in county offices. A county office in a participating county could provide these services after submitting written consent to the commissioners court.

DPS would be required to provide to a participating county all equipment necessary to perform these services. A participating county could collect

an additional fee of $1 for each transaction. The county would be required to remit to DPS all other fees collected.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 827 would increase government efficiency and enhance convenience for citizens by allowing counties to renew driver's licenses and ID certificates. Because up to 80 counties do not have DPS offices, some residents must travel long distances to renew their licenses and certificates. This problem has been exacerbated as DPS recently closed offices in some counties and did not have the authority to allow counties to provide these services.

This bill would increase efficiency by combining services provided by government offices. Allowing counties to perform these necessary services would remove some of the burden from DPS. Consumers could see shorter lines at DPS offices.

Because CSHB 827 would be permissive, DPS and the county would enter into an agreement only if both sides consented. This gives both DPS and the county the flexibility to consider the costs and benefits of the agreement, without forcing either side to unwillingly spend resources.

OPPONENTS SAY:

The implementation cost for DPS to provide counties with the necessary equipment could be relatively expensive. DPS would need to create and update program content, modify software applications, and train agency staff. Funding for this implementation would come from the State Highway Fund and could pull resources from other priorities. Similarly, participating counties could have to hire new staff or lease new office space. The $1 county fee per transaction probably would not offset much of this cost.

NOTES:

The companion bill, SB 1729 by Nichols, was passed by the Senate by a vote of 29-0 on April 16 and it has been referred to the House Homeland Security and Public Safety Committee.

The introduced version of the bill would have limited participation to counties that had a population of 50,000 or less. It would have specified that DPS would enter into the agreement with a county clerk and that

county clerk employees would provide the services at the clerk's office. The introduced version would not have specified that DPS provide equipment necessary to perform the services.

The Legislative Budget Board estimated that CSHB 827 would result in a cost of about $19.1 million to the State Highway Fund in fiscal 2014, abpit $1.1 million in fiscal 2015, and about $1.4 million in each following year.

SUBJECT: Notice for abandoned or unclaimed property seized during arrests

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Burnam

WITNESSES: For — Jose Rosas, Houston Police Department; (*Registered, but did not testify:* Mark Clark, Houston Police Officers' Union; Al Luna, City of Houston; TJ Patterson, City of Fort Worth; Steven Tays, Bexar County Criminal District Attorney's Office)

Against — None

On — John Dahill, Texas Conference of Urban Counties

BACKGROUND: Code of Criminal Procedure, art. 18.17 governs the disposition of abandoned or unclaimed property. The property covered by the section includes all unclaimed or abandoned personal property seized by any peace officer, other than:

- contraband subject to forfeiture;
- whiskey, wine, and beer;
- property held in evidence to be used in a pending case; and
- property that has been ordered destroyed or returned to the person entitled to its possession.

A person authorized by the municipality or county to hold the property delivered by the peace officer is required to mail a notice to the last known address of the owner of the property.

If the property has a fair market value of $500 or more and the identity or address of the owner is unknown, the person holding the property is required to publish notice in a newspaper. The notice must state, among other things, that if the owner does not claim the property within 90 days the property will be disposed of and the proceeds, after deducting

reasonable expenses, will be placed in the treasury of the municipality or county disposing of the property.

If the property valued at $500 or more is disposed of by sale, it must be preceded by further notice in a newspaper published 14 days before the date of sale. The notice must generally describe the property, state the owner's name if known, and state the date and place of sale.

For property valued at less than $500 for which the identity or address of the owner is unknown, the person may sell or donate the property without notice, with any proceeds placed in the treasury of the municipality or county.

DIGEST:

CSHB 884 would allow a law enforcement agency to provide notice to the owner of seized property under Code of Criminal Procedure, art. 18.17 at the time the owner was taken into or released from custody. The bill would apply only to property, other than money, that was seized by a peace officer at the time the owner of the property was arrested for a class C misdemeanor (maximum fine of $500). The owner would be required to sign the notice and attach a thumbprint to it. The notice would include:

- a description of the property being held;
- the address where the property was being held; and
- a statement that if the owner did not claim the property within 30 days of being released from custody, the property would be disposed of and the proceeds of the property would be placed in the treasury of the municipality or county providing the notice.

If the property described by the notice was not claimed by the owner in the time specified, the law enforcement agency holding the property would be required to deliver the property to a person authorized by the municipality or county to hold the property. That person could sell or donate the property without mailing or publishing any additional notice. The sale proceeds, after deducting the reasonable expense of keeping and disposing of the property, would be deposited in the treasury of the municipality or county disposing of the property.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply only to personal property seized or taken into custody on or after the effective date.

SUPPORTERS SAY:

CSHB 884 would help provide more efficient and direct notice to property owners whose property had been seized. Mailing and posting in the newspaper are inefficient methods, and often the owner of the property is never properly notified. People whose property is seized during arrest for a class C misdemeanor often are transient and may not still live at their last address of record. Tracking down the identity and address of property owners costs law enforcement agencies unnecessary time and resources. It is particularly unnecessary in situations where the property owner is in custody and can be notified in person immediately and efficiently.

The bill also would improve notification and identification procedures by requiring a fingerprint. Current notice provisions do not involve biometric matching to ensure that the person arrested is the same person who receives the notice or retrieves the property. With the addition of the thumbprint requirement, law enforcement agencies would be able to ensure that notice was given and property retrieved by its true owner.

The 30-day limit would be a reasonable period in which to allow property owners to retrieve their property. Current law provides a 30-day time limit for all property for which notice is not given. Because the nature of the notice created by this bill would be faster and more direct than existing notice provisions that require 90 days, the shorter time period is merited and reasonable. A person receiving this notice upon being released from custody could immediately retrieve his or her property.

The 30-day time limit under this notice also would allow agencies to dispose of property more quickly, reducing the cost and hassle of storage. Property divisions of local and county jails are overflowing with bulky abandoned property of very little value, such as shopping carts, abandoned bicycles, and old backpacks. Often, owners do not wish to retrieve this property and leave it for the law enforcement agency to dispose of, which clutters storage and increases costs.

The bill is permissive and would allow local law enforcement agencies to provide notice in Spanish if they saw a need for it. The bill contains no language requirements, and every entity affected would be able to determine the most appropriate language in which to provide notice to the property owner.

OPPONENTS

CSHB 884 would unnecessarily limit the ability of some property owners

SAY:

to retrieve their property before it was disposed. Under current law, every notice provision gives property owners 90 days from the date of notice to recover their property. Reducing the time to 30 days only for this type of notice would deprive some people of the additional time they might need to retrieve their property, particularly if they lived elsewhere or had no reliable transportation.

OTHER OPPONENTS SAY:

CSHB 884 should include provisions for providing notice in Spanish. Many communities in Texas have large Spanish-speaking populations, and everyone should have the opportunity to understand the notice they are receiving. Because this notice would be provided during the custody process — often in the same location or near to where the property is being held — it would be in the best interests of the law enforcement agency and the property owner to provide notice in Spanish if needed to ensure the efficiency of the notice process.

NOTES:

CSHB 884 differs from the bill as filed in that the committee substitute would:

- require a thumbprint from the owner of the property;
- change the beginning of the 30-day time period from the date the notice was signed to the date the owner of the property was released from custody; and
- change language about peace officers holding the property to refer more broadly to law enforcement agencies.

A similar bill, SB 367 by Whitmire, was passed by the Senate by a vote of 30-0 on March 27 and was reported favorably by the House Committee on Criminal Jurisprudence on April 23.

A similar bill, HB 2857 by Wu, was referred to the House Committee on Criminal Jurisprudence on March 19.

SUBJECT: Reducing the size of the Texas Juvenile Justice Board from 13 to 9

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth

0 nays

WITNESSES: For — None

Against — (*Registered, but did not testify:* Marc Bittner, 33rd and 424th Judicial District Juvenile Probation Department)

On — Jim Allison, County Judges and Commissioners Association of Texas; Jennifer Carreon, Texas Criminal Justice Coalition; Mike Griffiths, Texas Juvenile Justice Department; Donald Lee, Texas Conference of Urban Counties; Mark Mendez, Tarrant County; Ron Quiros, Guadalupe County and the Central Texas Chiefs Association; Lisa Tomlinson, Texas Probation Association, Johnson and Somervell Co. Juvenile Probation; Ray West, Brown County; Mark Williams, Texas Probation Association. & Tom Green County Juvenile Probation and six small counties surrounding Tom Green; Roger Harmon, Johnson County; (*Registered, but did not testify:* Susan Humphrey, Bell County Juvenile Servcies)

BACKGROUND: The Texas Juvenile Justice Board oversees the Texas Juvenile Justice Department (TJJD) which was created in 2011. The 82nd Legislature created the new agency and abolished the two state agencies, the Texas Youth Commission and the Texas Juvenile Probation Commission, which previously were responsible for juvenile offenders.

The 13-member board is composed of:

- one district court judge who is a judge of a juvenile court;
- three members of a county commissioners court;
- one prosecutor in a juvenile court;
- one chief juvenile probation officer of a department serving a county of fewer than 7,500 persons younger than 18 years old;
- one chief juvenile probation officer of a department serving a county that includes at least 7,500 but fewer than 80,000 persons

younger than 18 years old;

- one chief juvenile probation officer of a department serving a county with a population of 80,000 or more persons younger than 18 years old;
- one adolescent mental health professional;
- one educator; and
- three public members.

Commission members serve staggered, six-year terms. They may not hold office in the same county or judicial district as other commission members.

DIGEST:

CSHB 2443 would reduce the size of the Texas Juvenile Justice Board from 13 members to nine. There would be one, instead of three, members from a county commissioners court. Membership of chief probation officers would be reduced from three who represent counties of different sizes to one, with no requirement to represent a county of any specific size. Each member would be required to live in a different political subdivision.

Members currently on the board would serve the remainder of their terms. As the terms of members from county commissioners courts and those who were chief probation officers expired, those positions would be abolished until there was one position left in each category.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2443 would make the Texas Juvenile Justice Board more efficient and effective. When the 82nd Legislature created the agency board and abolished the Texas Juvenile Probation Commission and the Texas Youth Commission, it was necessary to appoint a large group with diverse expertise to guide the transition. As the agency has taken shape and the transition is ending, it would be appropriate to reduce the board to a more manageable, efficient size in keeping with other agency governing boards.

Under CSHB 2443, the TJJD governing board would retain its diverse membership with strong representation from local juvenile justice officials and other important stakeholders. Every group that currently has a spot on the board would continue to have representation. Representatives of commissioners courts and chief juvenile probation officers would continue to serve on the board, along with representatives of judges, prosecutors,

mental health professionals, educators, and the public. CSHB 2443 would ensure geographic diversity by prohibiting representatives from residing in the same area.

The interests of all counties and chief probation officers could adequately be represented by one board member each. This would be consistent with other governing boards on which members represent broad interest groups. Just like on other agency boards, members of the TJJD board could continue to raise issues not directly tied to their position.

An interest group need not have a formal spot on the TJJD board for it to participate in the agency's work and to have its voice heard. The agency has an advisory council that includes a representative of commissioners courts and seven chief probation officers. Information would continue to flow between the agency and those in the juvenile justice field, and public comments could be made to the board.

CSHB 2443 would maintain a proper relationship between commissioners courts and probation officers by allowing one representative of each on the agency board. Probation chiefs work for counties, and it would be inappropriate for them to outnumber representatives of county commissioners courts.

With three public members, it would be possible for representatives from juvenile justice advocacy organizations or any other group to be appointed to the board. In addition, the public can commit to the board and make other contributions to the agency.

OPPONENTS SAY:

The composition of the current board should be retained because it ensures that all stakeholders have a formal voice in the decisions of the juvenile justice board. TJJD was created about two years ago and is still in a transition phase. Changing the composition of the board could upset the stability of the agency and the board. The large, diverse board with strong representation from local juvenile justice officials ensures that the agency is properly guided.

Counties commissioners deserve at least two representatives on the board because counties provide about 70 percent of probation funding and handle about 98 percent of youths involved in the juvenile justice system. At least two representatives are needed to adequately represent this local role in juvenile justice and to allow a voice for both large and small

counties. County court commissioners are elected officials representing the public and should maintain their strong presence on the board.

The current requirement that the board have three chief probation officers should be maintained. This arrangement gives the board the benefit of knowledge from the local practitioners who represent small, medium, and large counties. The state's 165 local probation departments operate differently, have different needs, and can contribute uniquely to the board. All of these voices need formal representation.

OTHER OPPONENTS SAY:

The board would benefit from having a formal position reserved for a representative from a juvenile advocacy organization. Such organizations often are heavily involved in agency issues.

NOTES:

The original bill would have reduced the board to seven members, instead of the nine in the committee substitute. The board would have had one member who was either a district court judge of a juvenile court, a member of a county commissioners court, or a juvenile court prosecutor. The committee substitute would allocate one position each to the judge, county commissioners court member, and juvenile prosecutor. The committee substitute also would require board members to reside in different political subdivisions.

SUBJECT: Allowing an HOA board to fill a vacancy by appointment

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman

0 nays

WITNESSES: For — none

Against — Xina Togba, Lakeville Homeowners in Katy, TX

BACKGROUND: Property Code, ch. 209, the Texas Residential Property Owners Protection Act, applies to all mandatory homeowners' associations (HOAs) and establishes requirements for association records, board meetings, voting, attorneys' fees, foreclosing on property, and other procedures.

Sec. 209.00593 requires elections for board members and allows an appointment by a board only to fill a vacancy caused by resignation, disability, or death. An appointed board member serves the unexpired term of the preceding member.

DIGEST: HB 3176 would allow an HOA board covered under chapter 209 of the Property Code to appoint a board member to fill a vacancy on the board, irrespective of resignation, disability, or death.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 3176 would correct an unintended consequence of a provision the 82nd Legislature added in 2011. The intent of the legislation, HB 2761 by Garza, was to add rules governing when an HOA board could appoint a member to fill a vacancy. The unintended consequence, however, was that the provision prohibited boards from filling vacancies because of a lack of anyone running for office when the election was held. A vacancy caused in such a way is a real problem for boards since the position cannot be filled until the end of its term. Vacancies cause problems for board proceedings and reduce representation for homeowners.

By allowing a board to appoint a member to fill a vacancy for any reason, HB 3176 would ensure that boards could function as required without changing the requirement for an election.

OPPONENTS SAY:

Allowing HOA boards to fill a vacancy by appointment would be an invitation to the types of abuses that the Legislature strived to contain in 2011. It is preferable to hold elections for all seats, especially if an HOA's deed restrictions call for elections in the event of a vacancy. HB 3176 would supersede those HOAs with this election requirement.

SUBJECT: Prohibiting release of school district employees' social security numbers

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner, Vo

0 nays

1 absent — Taylor

WITNESSES: For — Paige Williams, Texas Classroom Teachers Association (*Registered, but did not testify:* Ted Melina Raab, Texas AFT; Josh Sanderson; Association of Texas Professional Educators)

Against — None

BACKGROUND: Government Code, sec. 552.024 allows government employees to choose whether to allow their employers to publically release the employee's home address, home telephone number, emergency contact information, social security number, or whether a person has family members.

DIGEST: HB 2961 would make confidential an employee's social security number in the custody of a school district. It would prohibit a school district from requiring an employee to choose whether to allow public access to the social security number of the employee or former employee. The bill would require school districts to develop policies prohibiting the use of social security numbers as employee identifiers for any reason other than tax purposes.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 2961 would make it clear that a social security number belonging to an employee of a school district could not be used for anything other than tax purposes. The bill would strengthen protection for school district employees from districts who were failing to protect employee privacy.

OPPONENTS SAY:

HB 2961 is unnecessary. Government employees, including school district employees, are currently protected from the release of certain personal information, including social security numbers, without the employee's permission.

SUBJECT: Eliminating licensing for ringside physicians and timekeepers

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Smith, Kuempel, Geren, Guillen, Price

0 nays

4 absent — Gooden, Gutierrez, Miles, S. Thompson

WITNESSES: For — None

Against — None

On — William Kuntz, Texas Department of Licensing and Regulation

BACKGROUND: State law requires that ringside physicians and timekeepers for combative sports be licensed under Chapter 2052 of the Occupation Code.

DIGEST: CSHB 1551 would end the requirement for ringside physicians and timekeepers for combative sports to be licensed by the Texas Commission on Licensing and Regulation. Instead, the commission could establish criteria and procedures for the assignment of ringside physicians and timekeepers. Ringside physicians would have to have an unrestricted and unlimited license to practice medicine in the state.

The Department of Licensing and Regulation would return a prorated portion of the fee paid for a license to anyone holding a valid ringside physician or timekeeper license. Pending disciplinary or administrative proceedings related to a violation of licensing or registration requirements would be dismissed. Administrative penalties for violations of requirements before the effective date of the bill still could be collected. Pending prosecution would not be affected and the former law would apply to offenses committed before the effective date of the bill.

This bill would take effect September 1, 2013.

SUPPORTERS CSHB 1551 would give the Commission on Licensing and Regulation the

SAY:

flexibility to establish its own rules to determine the criteria that ringside physicians had to meet. Currently, the only criteria to receive a ringside physician's license are to be licensed to practice medicine in Texas. Consequently, the commission has little authority to revoke the ringside physician's license of any person who has a current license to practice medicine in Texas.

Because a ringside physician's license is entirely dependent on having a license to practice medicine in Texas, the current commission's license is redundant and unnecessary. Similarly, because there are no criteria to receive a timekeeper's license, this license is unnecessary.

OPPONENTS SAY:

CSHB 1551 should strengthen licensing requirements for ringside physicians instead of eliminating the license altogether and relying on commission rules. Texas has weak requirements for ringside physicians compared with other states and more stringent regulations should be placed in state statute.

NOTES:

The committee substitute differs from the bill as filed by requiring a ringside physician's license to practice medicine be unrestricted and unlimited and requiring individuals to agree to act as ringside physicians.

The companion bill, SB 618 by Carona, was passed by the Senate by a vote of 31-0 on March 13 and reported favorably by the House Committee on Licensing and Administrative Procedures on April 23.

SUBJECT: Filling vacancies on the governing bodies of home-rule cities

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez

1 nay — Sanford

1 absent — Anchia

WITNESSES: For — Matt Ruszczak, Greater Mission Chamber of Commerce, City of Mission, Texas

Against — None

BACKGROUND: Section 11, Article XI of the Texas Constitution prohibits a city with terms of office between two and four years from filling vacancies by appointment. Instead, cities must fill vacancies by majority vote during a special election held within 120 days after the start of the vacancy.

Local Government Code, sec. 26.045, requires a municipality with a population of 1.5 million or more to fill a city government vacancy by special election if there are more than 270 days left before the next general election. The special election is held in the district in which the vacancy occurred or in the entire municipality if the vacancy was in an at-large position.

Home-rule municipalities have a population of more than 5,000 and have adopted a home-rule charter.

DIGEST: HB 1372 would remove from the requirements of Local Government Code, sec. 26.045 a municipality with a population of 1.5 million or greater that had adopted by charter or charter amendment a different procedure for filling a city government vacancy for which the unexpired term was 24 months or less.

The bill would take effect on the date the voters approved HJR 87, which would amend the Texas Constitution to authorize a home-rule municipality to provide in its charter a procedure to fill a vacancy on its

governing body with an unexpired term of 12 months or less. If HJR 87 were not adopted by the 83rd Legislature and approved by the voters, HB 1372 would have no effect.

SUPPORTERS SAY:

In conjunction with voter approval of HJR 87 by Muñoz, HB 1372 would allow citizens of home-rule cities to decide through their charters how to fill short-term vacancies in city elected offices that had terms longer than 12 months. Before its passage by the House on April 26, HJR 87 was amended to reduce from 24 months to 12 months the maximum length of the unexpired term for a vacancy that could be filled under the provisions of the resolution. The author plans to introduce a floor amendment that would conform HB 1372 to the engrossed version of HJR 87 by changing the unexpired term language from "24 months or less" to "12 months or less."

HB 1372 is both enabling and conforming legislation that would align the Local Government Code with the amendment to the Constitution proposed by HJR 87. By creating an exception to the provisions of sec. 26.045, the bill would allow a municipality with a population of 1.5 million or greater (Houston) to decide through its charter to fill short-term vacancies by appointment, which would be authorized by voter approval of HJR 87. Currently, Houston must spend taxpayer money to order a special election to fill any governing body vacancy. The bill simply would make the application of the proposed constitutional amendment even across all home-rule municipalities.

Neither HB 1372 nor HJR 87 would invite corruption or erode democracy. These measures would preserve democratic accountability because the cities affected by both still would have to hold regular elections as usual after the expiration of an appointed official's term.

OPPONENTS SAY:

HB 1372 would increase the opportunity for corruption in local government by allowing city officials to appoint one another. Voting and elections are essential functions of government and are the best way to ensure democratic accountability. The cost of special elections is a small price to pay for democracy.

NOTES:

HB 1372 is the enabling legislation for HJR 87 by Munoz, which would propose an amendment to authorize a home-rule municipality with city government terms longer than two years to provide in its charter the procedure to fill a vacancy on its governing body with an unexpired term

of 12 months or less. HJR 87 was passed by the House and was reported engrossed on April 26.

SUBJECT: DPS database of repeat offenders who commit family violence

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

1 absent — Kleinschmidt

WITNESSES: For — (*Registered, but did not testify*: Ashley Chadwick, Freedom of Information Foundation of Texas; Lon Craft, Texas Municipal Police Association; James Jones, San Antonio Police Department; Steven Tays, Bexar County Criminal District Attorney's Office; Theresa Blake)

Against — None

On — (*Registered, but did not testify*: Skylor Hearn, Texas Department of Public Safety)

BACKGROUND: Penal Code, Title 5 covers offenses against the person. Offenses are listed under the categories of criminal homicide, kidnapping, unlawful restraint, smuggling of persons, trafficking of person, sexual offense, and assaultive offenses.

Under Code of Criminal Procedure (CCP), art. 42.013, courts that determine at trial that an offense under Penal Code, Title 5 involved family violence as defined by Family Code, sec. 71.004 must make an affirmative finding of fact and enter it into the judgment of the case.

Under CCP, art. 42.015, in trials for unlawful restraint, kidnapping, and aggravated kidnapping, a judge who determines that a victim was younger than 17 years old must make an affirmative finding of fact and enter it into the judgment.

DIGEST: HB 21 would require the Department of Public Safety (DPS) to maintain a computerized database of offenders who:

- had at least three convictions for offenses which had an affirmative finding of family violence made under CCP, art. 42.013 or art. 42.015; and
- were at least 17 years old when at least three of the offenses were committed.

The bill would expand the types of offenses that under CCP, art. 42.015 require judges to make an affirmative finding of fact if a victim were younger than 17 years old. This requirement would apply to all Penal Code, Title 5 offenses against persons, instead of only the offenses of unlawful restraint, kidnapping, and aggravated kidnapping.

The database would have to contain, to the extent available:

- the offender's name, aliases, date of birth, and last known address;
- a physical description and recent photograph of the offender;
- a list of each qualifying conviction, conviction date, and the punishment for each offense; and
- whether the person was discharged, placed on community supervision, or released on parole or mandatory supervision for each offense.

The database information would be public, with the exception of an offender's social security number, driver's license number, telephone number, and information that would identify the victim.

DPS would be required to permit persons in the database to petition for removal and would be required to remove a person's name if :

- an order of expunction had been issued for one of the qualifying offenses, unless the person had three or more other convictions for a qualifying offense; or
- during the seven years preceding the request the person had not been convicted of one of these offenses.

The website housing the database would have to include information about how to petition for removal from the database and the circumstances under which DPS would grant the petition.

DPS could not charge for processing electronic inquiries made through the Internet for public information in the database. The current prohibition on

DPS charging for processing electronic inquiries for public information in the sex offender database would be changed so that the electronic requests would have to be made through the Internet to be processed at no charge. Any person would be entitled to public information in the database.

The database would have to be implemented by January 1, 2014, and could include only information about persons who committed at least one of the qualifying offenses on or after the bill's effective date.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 21 would increase awareness of domestic and family violence, help protect victims, and prevent additional incidents of these crimes. These steps are necessary given the prevalence of these crimes, the harm they do to victims, and the state's responsibility to help protect Texans from these offenders. Protecting public safety through a family violence database would be an appropriate role for the state.

Family violence is a serious problem. Last year about 48,825 adults and 30,228 children were served by family violence shelters. One study reported that 74 percent of Texans have either experienced some form of domestic violence themselves or have a family member or friend who has experience family violence.

HB 21 would take a step toward addressing domestic violence by giving Texans a tool to gather information about dangerous repeat offenders with a clear pattern of domestic violence and assaultive crimes against children. Persons committing these crimes could be a danger to others, and the public should have access to information about them.

The family violence registry would parallel the state's successful sex offender registry. The registry has allowed parents and the general public to gather information to protect themselves, and HB 21 would do the same. The bill contains safeguards to protect victims' privacy by specifically prohibiting information that would identify the victim. As with the sex offender registry, the protection of victims and the potential to prevent additional offenses outweigh concerns about the effect of the registry on offenders.

HB 21 is narrowly drawn to require information in the database only for those who present the most danger relating to family violence. It would apply to repeat adult offenders with a clear pattern of domestic violence and committing certain crimes against children.

The bill would recognize that in some situations it may be appropriate for offenders who have demonstrated that they no longer represent a clear danger to be removed from the database. Persons could petition for removal, and DPS would have to grant it if the conditions in the bill were met.

HB 21 would better protect children by expanding the current requirement that trial judges make a finding that a victim was a child. Requiring this of all offenses against a person would ensure that offenders' records reflected a pattern of danger to children.

Any effect on plea agreements should be minimal. Prosecutors take these cases seriously, and HB 21 would not change their efforts to work hard to achieve the best outcome in each case.

HB 21 would not cost the state or burden DPS. According to the Legislative Budget Board, there would be no significant fiscal implication to the state, and DPS could absorb the costs within its current appropriations. DPS could use its experience in establishing and maintaining the sex offender registry to implement HB 21.

OPPONENTS SAY:

HB 21 would not be an effective tool because a family violence database would be burdened with problems similar to those of the sex offender registry and would expand the scope of government without clear evidence it would accomplish its goal.

As with the sex offender registry, the bill could result in the creation of a database containing information about an overly broad group that included too many offenders who were not threats to the community. Such a database could have limited use to the public, because family violence offenders tend to be a threat to their family and household members, rather than the public. In addition, the database could create a false sense of security for the public because many abusers are not convicted and would not be in the database.

The effectiveness of the sex offender registry in reducing recidivism is

questionable, and it has been named as a factor inhibiting the ability of offenders to rehabilitate and reintegrate into society. The stigmatization associated with appearing in the sex offender registry can result in harassment and difficulty finding housing and employment. The database established in HB 21 could create similar problems.

Crime databases also can have negative effects on victims. For example, HB 21 could violate victims' or others' privacy if they could be linked to someone in the database. In addition, a family violence database could have a negative impact on the prosecution of these cases. Defendants could be reluctant to enter into plea agreements if inclusion on a public database followed a guilty plea. This could make cases in which the evidence was not strong or a victim was reluctant to testify much more difficult to prove.

SUBJECT: Regulating health care provider network contract arrangements

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, C. Turner

1 nay — Taylor

1 absent — Sheets

WITNESSES: For — Dawn Buckingham, Texas Medical Association; John McCormick, Texas Optometric Association; Dan McCoy, Blue Cross and Blue Shield of Texas; Bill Reynolds; (*Registered, but did not testify:* Charles Bailey; Texas Hospital Association; Joel Ballew, Texas Health Resources; Christine Bryan, Clarity Child Guidance Center; Jaime Capelo, Texas Chapter American College of Cardiology, Texas Urological Society, Texas Academy of Physician Assistants; Tracy Casto; Audra Conwell, Alliance of Independent Pharmacists; Tony German, Texas Ambulatory Surgery Center Society; John Gill; Steven Hays; John Heal, PBA Health / Texas TrueCare Pharmacies; Greg Herzog, Texas Society of Gastroenterology and Endoscopy; Bobby Hillert, Texas Orthopaedic Association; Michelle Ho, Texas Medical Association; Harry Holmes, Harris County Healthcare Alliance; Chuck Hopson, Texas Pharmacy Business Council; Marshall Kenderdine, Texas Academy of Family Physicians; Phillip Korenman; John Lee Sang; David Marwitz, Texas Dermatological Society, Texas Pharmacy Association; Lorraine Powell; Michelle Rodriguez, Tri-County Medical Society; Robert Rogers; Alberto Santos; Will Schlotter, Texas Medical Group Management Association, Capitol Anesthesiology; Michael Wright, Texas Pharmacy Business Council; Sherif Zaafran, Texas Society of Anesthesiologists)

Against — David West, Texas Association of Benefit Administrators; (*Registered, but did not testify:* Lucinda Saxon, American Association of Preferred Provider Association)

On — David Gonzales, Texas Association of Health Plans; Kandice Sanaie, Texas Association of Business; (*Registered, but did not testify:* Debra Diaz Lara, Texas Department of Insurance)

BACKGROUND:

Many doctors, hospitals, and other health care providers access patients by participating in preferred provider organizations (PPO). PPOs and similar contracting entities, such as exclusive provider organizations (EPOs), form networks of health care providers who agree to offer their services at contractually discounted rates. The PPO sells access to these networks to insurance companies, health maintenance organizations (HMOs), employers, and other third parties seeking contractual discounts and decreased claims costs.

While the Texas Department of Insurance (TDI) has some authority over the health benefit plans that use PPO networks and financially regulates some aspects of companies that contract with PPOs, it does not have regulatory authority over the PPOs themselves. Insurance Code, sec. 1301.056 prohibits the sale, lease, or transfer of information regarding the reimbursement terms of health care provider network contracts without the prior notification and express authority of the other contracting parties. Administrative penalties are limited to insurers and third-party administrators.

DIGEST:

CSHB 620 would spell out the registration and responsibilities of "contracting entities," most commonly preferred provider organizations (PPOs). The bill would define a contracting entity as an individual or entity that contracted with health care providers for the delivery of services to individuals covered under a health benefit plan and that, in the ordinary course of business, established a provider network for access by another party.

Registration. Contracting entities that were neither HMOs nor insurers with a certificate of authority would have to register with the Texas Department of Insurance within the first 30 days of their operations and would have to disclose:

- all names used by the contracting entity;
- organizational charts and lists that show the entity's structure, including the relationships between the entity and any of its affiliates, as well as its internal management structure;
- the mailing address and main telephone number of the contracting entity's headquarters and primary contact for TDI; and
- any other information required by the commissioner by rule.

TDI would be authorized to collect a reasonable fee to administer the

registration process and the commissioner would adopt by rule the format for its submission.

Contracting entities that were HMOs or insurers holding a certificate of authority would file with the TDI commissioner an application for a registration exemption, which would include a list of the contracting entity's affiliates. This list would be public information and the contracting entity would update it annually. Affiliates would be exempt from registration if the commissioner determined that they did not have a basis to disclaim the affiliation, and that the relationships between the affiliates and the certified entity, including other networks, were disclosed and clearly defined.

Contract requirements. CSHB 620 would:

- prohibit a contracting entity such as a PPO from selling, leasing, or transferring information regarding the provider network contract's reimbursement terms without the adequate prior notification and express authority of the provider;
- require signatures for each separate line of business, including benefit plans for PPOs, EPOs, HMOs, Medicaid managed care, the state child health plan, Medicare Advantage or similar plans, and any additional lines of business the TDI commissioner added by rule;
- prohibit contracting entities from providing an individual or entity access to a provider network contract's services or discounts unless the contract specifically stated the person or entity had to comply with all applicable terms of the contract;
- require the contracting entity to provide by request information about whether a person or entity had authorized access to the provider's services and contractual discounts;
- make provider network contracts unenforceable against a provider unless they specified a fee schedule or payment methodology for each separate line of business; and
- require contracting entities to allow a provider reasonable access, including electronic access, during business hours to review the provider network contract.

Enforcement and penalties. The bill would allow the TDI commissioner to adopt rules to implement its provisions and impose administrative penalties on a contracting entity that violated the bill's provisions or

implementing rules.

Effective date. A provider's express authority would be presumed if, on the first renewal after the effective date of CSHB 620, the provider did not object within 60 days after receiving a mailed notice from the contracting entity that included:

- the fee schedules for each line of business in the contract;
- separate signature lines for each line of business; and
- notice that lack of a timely response would serve as agreement to the renewal.

The bill would take effect September 1, 2013, and would apply only to contracts entered into or renewed on or after that date.

SUPPORTERS SAY:

CSHB 620 would clarify the regulatory environment for contracting entities and give TDI the authority to protect health care providers and consumers.

The bill would increase contracting entities' accountability for provider reimbursement. Currently providers face costly and time-consuming administrative burdens attempting to verify the accuracy of payments they receive for their services. The complex interaction among contracting entities, payers, third-party administrators, and their affiliates is made even less clear as contracts signed with PPOs are often resold, rented, and leased to other parties without the providers' knowledge. CSHB 620 would increase transparency by requiring providers know of and approve any such transactions, giving providers control over what they are paid and by whom.

The bill would protect consumers. Because PPOs and other contracting entities are largely unregulated, TDI does not know how many are operating in Texas or the degree of consumer harm. PPOs' ability to sell, rent, and lease provider contracts without approval can create uncertainty for patients regarding their coverage options and may lead to higher health care costs if a provider is not in-network as expected. Consumers also have little recourse should they seek to file a complaint against a PPO. CSHB 620 would not only decrease uncertainty about health care coverage, it would require each contracting entity be registered and would give TDI the authority to sanction PPOs for violating state law.

The registration requirements for contracting entities are not onerous, and

the fees necessary to administer the program would be reasonable and would not impose a financial burden on the state.

Despite critics' claims otherwise, sec. 1458.102 would not conflict with the federal Employee Retirement Income Security Act of 1974 (ERISA) and not lead to an ERISA preemption challenge. The bill would contain no mandate that an entity, including a self-funded employee benefit plan, accept any particular provider network contract. While network contract purchasers would be held to all applicable terms and conditions of the contract, they would be under no obligation to accept the services offered by the contracting entity. The bill would only place limits on the contracting entity, which would be clearly defined as an entity that established a provider network or networks for access by another party in the ordinary course of business. The bill would not place limits on potential purchasers and would therefore regulate only sellers. Since the provider network is not an ERISA benefit plan, the terms of ERISA would not be implicated.

OPPONENTS SAY:

CSHB 620 would limit employers' ability to reduce health care costs in self-funded plans by requiring that they comply with all applicable provider network contract terms. This would prohibit employers from including what few legally available cost-control mechanisms still exist to them, such as language allowing only "medically necessary" services and employer-specific rate schedules. Where such plan provisions already exist, legal issues would arise over which contract controls.

The bill would create difficulties for claims administrators by prohibiting access to the network provider agreements, which are signed with confidentiality provisions. Without access to the contract terms, claims administrators would have a difficult time ensuring claims were properly adjudicated.

CSHB 620's section 1458.102 would not survive a federal preemption challenge under ERISA. An ERISA-governed health benefit plan accessing or wanting to access a PPO network would be forced to alter the terms of its plan without it having been negotiated or agreed to. This would interfere with the congressional intent expressed through ERISA for a national, uniform administration of employee benefit plans. It would also create conflicts between the terms of the PPO contract and the design of an ERISA plan.

NOTES:

The companion bill, SB 822 by Schwertner, was passed by the Senate on April 17 and referred to the House Insurance Committee on April 22.

Among other provisions, the committee substitute differs from the original in that it would:

- regulate only contracting entities rather than third parties to prohibit the sale, lease, and rental of provider network contracts;
- extend to advanced practice nurses, optometrists, and therapeutic optometrists;
- extend to Medicaid, Medicare, and the state child health plan;
- define the separate lines of business that require a provider's express authority;
- grant the commissioner rulemaking authority to implement the bill's provisions, including to add lines of business requiring a provider's express authority, and;
- change the bill's contract implementation date from January 1, 2014 to September 1, 2013 and provide procedures for presuming a provider's express authority when initially renewing an existing contract.

SUBJECT: Electioneering conducted near a polling place

COMMITTEE: Elections —committee substitute recommended

VOTE: 6 ayes — Morrison, Johnson, Klick, Miller, Simmons, Wu

0 nays

1 absent — Miles

WITNESSES: For — Dana DeBeauvoir, County and District Clerks Legislative Committee; Chris Howe; Matt Krause; Glen Maxey, Texas Democratic Party; B R "Skipper" Wallace, Republican County Chairman's Association; Thomas Washington; (*Registered, but did not testify:* Donna Davidson; Eric Opiela)

Against — (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Mark Israelson, City of Plano; TJ Patterson, City of Fort Worth; Walt Smith, Scenic Texas)

On — Jacquelyn Callanen, Bexar County Elections; Scott Houston, Texas Municipal League; John Oldham, Texas Association of Election Administrators; Michael Vasquez, Texas Conference of Urban Counties (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State Elections Division)

BACKGROUND: Election Code, sec. 61.003 governs electioneering and loitering near a polling place during the regular voting period. It is a class C misdemeanor (maximum fine of $500) under this section to loiter or electioneer for or against any candidate, measure, or political party within 100 feet of any outside door through which a voter may enter a building in which a polling place is located.

Under sec. 85.036 , it is a Class C misdemeanor to electioneer for or against any candidate, measure, or political party within 100 feet of any outside door through which a voter may enter a building in which a polling place is located.

DIGEST:

Under CSHB 259, an entity that owned or controlled a public building could not prohibit electioneering on the building's premises outside of the area specified in Election Code, secs. 61.003 and 85.036 during the voting or early-voting period. The entity could enact reasonable regulations concerning the time, place, and manner of electioneering. "Electioneering" would include the posting, use, or distribution of political signs or literature.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 259 would ensure the protection of First Amendment rights and emphasize their importance to municipalities and law enforcement. The bill would prevent situations such as the arrest last year of a citizen in Watauga in Tarrant County for merely holding a sign outside of the 100-foot perimeter. Political speech, including electioneering, is one of the most important forms of constitutionally protected speech, and the ability to exercise this right is especially important during an election. CSHB 259 would emphasize that protecting this speech is a priority.

Workload of public entities. CSHB 259 would not put an undue burden on public entities beyond what the U.S. Constitution requires. Although some electioneering could require local governments to alter normal routines or accommodate public demands, democracy is complicated and sometimes government must accept minor inconveniences for the greater good, including the protection of speech.

Disruptions caused by electioneering. The bill would not cause disruptions nor prohibit public entities from conducting normal business. Entities in charge of polling locations still could enact reasonable regulations to protect patrons and place reasonable limits on the time, place, and manner of electioneering but would not be able to unconstitutionally prohibit political speech. The bill would preserve the existing 100-foot perimeter within which electioneering is prohibited, which would allay concerns about disruptions caused by electioneers attempting to influence voters while inside the polling location. CSHB 259 would seek to codify and reinforce the current protections provided by the First Amendment.

Posting of signs. CSHB 259 would clarify the definition of electioneering for local entities to ensure that political speech was uniformly protected. Some municipalities have incorrectly interpreted the posting of signs and distribution of literature as activity that falls outside of the definition of "electioneering," and incorrectly prohibited it. The clarification in the bill would prevent municipalities from inadvertently violating the constitutional rights of electioneers.

OPPONENTS SAY:

Workload of public entities. CSHB 259 would burden commissioners courts and those controlling other public buildings with having to referee between groups desiring to electioneer on public property. Electioneering outside of polling locations has grown beyond mere leafleting and sign-holding. Often parties or candidates want to hold a barbecue or place a tent on the premises of a building outside the 100-foot perimeter. This creates logistical problems for the public entities in these buildings, which find they having to mediate conflicts and make decisions for the political groups. Preventing these entities from prohibiting electioneering on their premises would exacerbate these issues.

Disruptions caused by electioneering. The bill would cause disruption of regular government functions and disturb the public. Polling locations are often in courts, libraries, and schools, which continue their normal business while serving as polling locations. Aggressive electioneering on the premises of these buildings disrupts their regular functions and interrupts access and voters. Rampant problems with electioneering make it more difficult to find polling locations, as more entities are declining to participate when polling locations are determined. Entities that run these buildings have and need the ability to prohibit electioneering to preserve their functions and protect patrons, voters, and members of the public. This bill would take away this ability.

Posting of signs. CSHB 259 would pre-empt existing law and city ordinances, taking local control out of the hands of municipalities. Municipalities throughout the state have sign ordinances that reduce visual clutter and preserve local beauty. Citizens and governing bodies of these municipalities take pride in the way their cities look and have gone through the proper legal channels to preserve the aesthetics of their communities. Sign-posting practices can ruin manicured lawns and puncture irrigation systems, creating a mess and resulting in repair costs for the public entities once the election is over. By including posting of

signs in the definition of electioneering, this bill would overrule these sign ordinances, invalidating regulations that citizens have worked hard to enact.

NOTES:

CSHB 259 differs from the bill as filed by adding amendments to section headings, changing the "shall not" provision to a "may not" provision, and moving the prohibitions to a different section of the code.

The identical companion bill, SB 928 by Paxton, was referred to the Senate State Affairs Committee on March 12.

SUBJECT: Disconnecting residential electric service by a landlord

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman

0 nays

WITNESSES: For — Mark Hurley, Texas Apartment Association; David Mintz, Texas Apartment Association; Emily Rickers, Alliance for Texas Families; (*Registered but did not testify*: Andrew Cates, Texas Association of REALTORS; Robert Doggett; Carlos Salinas, Alliance for Texas Families)

Against — None

BACKGROUND: Property Code, sec 92.008(b) prohibits the interruption of electric service furnished by a landlord to a tenant unless the interruption results from repairs, construction, or an emergency.

DIGEST: HB 1086 would allow landlords who bill tenants for electric service through submetering or prorating electric bills of master metered electricity to disconnect a tenant's electric service for nonpayment of electric service subject to certain notice, human health and safety protections, and repayment options.

In order to disconnect electric service for nonpayment, a landlord would have to state the right to do so in a written lease and the tenant's electric bill must have remained unpaid on or before the 12th day after the date the electric bill was issued.

The landlord would be required to provide disconnection notice not earlier than the first day after an electric bill was due nor later than five days before the interruption date stated in the notice. The notice would have to be delivered by mail or hand separate from other written communication. HB 1086 would require the notice to:

- prominently display the words "electricity termination notice" or similar language underlined or in bold;

- specify the date that electric service will be interrupted;
- note the location where the tenant could go during the landlord's normal business hours to make arrangement to pay the bill to avoid electric service interruption;
- include the amount that would have to be paid to avoid the interruption of electric service;
- provide a statement that the tenant's electric payment could not be applied to rent or other amount owned under the lease;
- include a statement that the landlord could not evict a tenant for failure to pay an electric bill when the landlord had interrupted service unless the tenant failed to pay for the electric service after two days, exclusive of weekends and state and federal holidays; and
- describe the tenant's right to avoid the interruption of service if the interruption would cause the tenant to become seriously ill or more seriously ill.

The landlord, at the same time that electric service was interrupted, would again provide notice to the tenant by hand delivery or attached to the tenant's door. That notice would be required to contain the statements described above, except that it would specify the date the electricity was interrupted instead of the date on which it would be interrupted.

Unless a tenant requested discontinuation or a dangerous condition existed, the landlord would not be able to interrupt electric service on a day on which the landlord or a representative was not available to receive payment or on the day before the landlord or representative was not available to receive payment.

Landlords would be prohibited from discounting service on a day on which the preceding day's temperature did not rise above freezing and the temperature was predicted by the nearest National Weather Service report to remain at or below freezing for the next 24 hours. Landlords would be prohibited from discontinuing service on days on which the National Weather Service had issued a heat advisory for the county of the premises, or had issued such an advisory in one of the two preceding days.

CSHB 1086 would prohibit landlords from disconnecting electric service for a limited time if they had been notified by the tenant that they were seriously ill or would become seriously ill, the tenant had provided a written statement from certain health care practitioners stating that the

person would become seriously ill or more seriously ill if the electric service was interrupted, and had entered into a deferred payment plan. CSHB 1086 would prohibit landlords from the disconnection of electric service to individuals described above before the 63rd day after those circumstances were established or an earlier date agreed to by the landlord and tenant.

Deferred payment plans would have to be in writing, allow the tenant to pay the outstanding electric bill in installments that extended beyond the due date of the next electric bill, and provide that the delinquency was paid in three equal installments over a period of three electric service billing cycles.

Landlords would be prohibited from interrupting electric service to a tenant after the landlord received some form of notification that an energy assistance provider was forwarding sufficient payment to continue the electric service.

The bill would require landlords to restore electric service within two hours of receiving payment for a delinquency or a tenant entered into a deferred payment plan.

Landlords would be prohibited from disconnecting electric service for:

- a delinquency incurred by a prior tenant;
- failure to pay non-electric bills, rents, or other fees;
- failure to pay electric bills six or more months delinquent; or
- failure of a tenant to pay a bill in which the tenant was disputing the charge, unless the landlord had conducted an investigation and reported the results in writing to the tenant.

CSHB 1086 would prohibit landlords from applying payment made by a tenant to avoid the interruption of electric service or to reestablish electric service to rent or any other amounts owed under the lease.

The bill would prohibit landlords from evicting tenants for failure to pay electric bills unless the tenant had failed to pay for the electric service after the electric service had been interrupted for at least two days, exclusive of weekends and holidays.

Landlords would be allowed to charge a reconnection fee if the dollar

amount of the fee was agreed upon in the lease. The reconnection fee would have to be computed based on the average cost to the landlord associated with reconnection, but could not exceed $10. A reconnection fee could not be applied to a deferred payment plan.

CSHB 1086 would change the penalties for landlords who violated Property Code sec. 92.008 "Interruption of Utilities." The bill would raise the penalty for violations from one month's rent plus $500 to one month's rent plus $1,000, reasonable attorney fees, court costs, less delinquent rents or other sums for which the tenant was liable to the landlord.

CSHB 1086 would take effect September 1, 2013, and would affect only electric bills that became delinquent on or after that date.

SUPPORTERS SAY:

CSHB 1086 is pro-tenant, pro-landlord legislation that has been endorsed by the representatives of apartment owners and tenants' rights organizations. The bill is intended to clean-up legislation (CSHB 882 by E. Rodriguez) enacted by 81st Legislature that prevented landlords from disconnecting utilities, but left them with eviction as the only remedy for tenants who did not pay electric bills.

The bill would apply to about 5 percent of the rental properties in the state in which the electric bill is paid by the landlord, and the landlord then bills the tenant for electricity. These types of apartment complexes have not been constructed since the 1970s. Although the bill technically could apply to single family residences and duplexes, these typically are metered by a utility company, not a landlord.

CSHB 1086 would protect landlord rights. Currently, the only recourse a landlord has when tenants do not pay their electric bills is eviction. If landlords decided not to use the interruption-of-service options described in HB 1086, the bill would not prevent them from pursuing their legal rights to address past due electric bills, including pursuing claims in small claims court, applying a charge for the past due electric bill against the tenant's deposit, or seeking eviction. Eviction costs both the tenant and landlord, as does nonpayment of electric bills. If one tenant fails to pay an electric bill, landlords are forced to make up for the lost revenue through an increase in rents or a decrease in service. CSHB 1086 would allow the landlord to take the intermediate step of disconnecting the tenant's electricity for nonpayment of electricity bills, thus benefitting the landlord, the affected tenant who was not evicted, and the other tenants.

CSHB 1086 would provide ample notice to the tenant, with details about consumer protections and remedies available to them. Consumers would receive protections similar to those provided under the Utilities Code to retail customers of electricity supplied directly by electric companies.

The bill would include prohibitions designed to protect tenants who were ill and also provide other measures to protect tenants similar to the protections used by electric companies, including halting disconnections during severe weather conditions.

CSHB 1086 would protect tenants from landlords by increasing the penalties for landlords who failed to comply with Property Code, sec 92.008. The bill would increase the penalty paid to the tenant if a landlord failed to comply with the chapter to $1,000 from $500, in addition to the other available remedies available to the tenant who had been wronged.

OPPONENTS SAY:

CSHB 1086 could have the unintended consequence of encouraging landlords to evict tenants. Landlords could claim that an apartment without power was a health hazard, arguing that a powerless apartment is likely to contain rotting food and tenants creating fire and other hazards by using candles and kerosene heaters.

NOTES:

The committee substitute contains technical corrections and conforms the bill to drafting conventions.

SUBJECT: Electioneering on the premises of certain privately owned polling places

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Morrison, Miles, Johnson, Miller, Simmons, Wu

0 nays

1 absent — Klick

WITNESSES: For — Oscar Villarreal; (*Registered, but did not testify:* Dana DeBeauvoir)

Against — None

On — (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: Election Code, sec. 43.031 requires that polling locations be public buildings if practicable, and outlines regulations for non-public buildings used as polling locations. Under sec. 43.031(d), a polling place may not be located in a building unless electioneering is permitted on the building's premises outside prescribed limits. A building at which electioneering is prohibited may be used as polling location only if it is the only building available for use as a polling place in that election precinct.

Election Code, sec. 61.003 prohibits loitering or electioneering during the regular voting period within 100 feet of an outside door through which a voter may enter the building with a polling place. An offense is a class C misdemeanor class C misdemeanor (maximum fine of $500).

Sec. 85.036 prohibits electioneering for or against any candidate, measure, or political party during the early voting period within 100 feet of any outside door through which a voter may enter a building in which a polling place is located. An offense is a class C misdemeanor class C misdemeanor (maximum fine of $500).

DIGEST: HB 127 would allow a private business that owned a building in which a polling place was located to prohibit electioneering on the privately owned premises of the building outside of the limits prescribed by Election Code

sec. 61.003.

The business or owner of the business would have to notify the authority holding the election – or the early voting clerk if prohibiting electioneering during early voting – of the prohibition. If a business had provided notice under this provision, it would be a class C misdemeanor (maximum fine of $500) under the bill to loiter or electioneer on the premises of the building during the voting period or to electioneer during the early voting period.

The bill would apply only to a county located on an international border that had a population of less than 300,000 in which a city with a population of more than 200,000 was located (Webb County).

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 127 would ensure that elections run more efficiently and voter participation remains high in Webb County. Webb County uses many buildings owned by private businesses as polling locations, such as shopping malls and grocery stores, to increase voter participation and provide accessibility. However, the number of private businesses willing to host polling locations has diminished as a result of more aggressive electioneering practices that disrupt business and damage private property. To maintain good relations with these businesses and continue to attract higher voter participation, HB 127 would allow these businesses to prohibit electioneering on their premises as long as they provided notice to the election officials.

Concerns about First Amendment rights could be solved with an amendment clarifying that, rather than prohibiting electioneering, the businesses could place reasonable regulations on the time, place, and manner of electioneering. This amendment would comply with constitutional standards, while ensuring private businesses could preserve regular business and protect patrons.

OPPONENTS SAY:

HB 127 would violate the First Amendment by prohibiting political speech. By allowing businesses to prohibit electioneering at a polling location, the bill would unconstitutionally stifle speech when it is needed the most. Political speech is the most important constitutionally protected speech, and the ability to exercise this right is especially important to protect during an election. Reasonable restrictions may be placed on the time, place, and manner of political speech, but it may not be prohibited

altogether.

NOTES: The author intends to introduce an amendment on the floor that would strike language to prohibit electioneering and insert language to allow reasonable restrictions concerning time, place, and manner of electioneering.

SUBJECT: Charging a documentary fee during the sale of certain vehicles

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips

0 nays

1 absent — Villarreal

WITNESSES: For — Darryl Hurst, Boating Trades Association of Texas; Sarah Kee, Texas Motorcycle Dealers Association; (*Registered, but did not testify*: James Booth, Texas Motorcycle Dealers Associations; John Kuhl, Boating Trades Association of Texas; Royce Poinsett, Texas Motorcycle Dealers Association)

Against — None

On — Leslie Pettijohn, Office of the Consumer Credit Commissioner

BACKGROUND: Finance Code, sec. 345.251 allows a retailer of motorcycles, boats, and other recreational vehicles to charge a fee of $50 or less to customers for preparing and handling documents and performing services related to the closing of a retail installment transaction.

The fee must be disclosed as an itemized charge on the retail installment contract, and the retailer must provide conspicuous, written notice as part of the transaction that a documentary fee is not official, not required by law, and cannot exceed $50.

DIGEST: HB 1233 would remove the $50 cap charged for a documentary fee. Instead the fee would be a reasonable amount agreed to by the buyer and seller that could not exceed a maximum fee amount set by the finance commission, which could adopt rules to implement the bill.

HB 1233 would remove “preparing” and “closing a retail installment transaction” from the list of services for which a retailer could charge a documentary fee.

The language of the required notice would be amended to match the provisions of HB 1233.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1233 would remove the arbitrarily priced document fee of $50 fixed in statute and allow the commissioner to replace the cap with one that reflected dealers' true cost for processing documents, remitting the sales and motor vehicle tax to the state, and developing federally mandated safeguards to protect customer information.

The $50 cap for the sale of a boat, motorcycle, or recreational vehicle has not been raised since 1993, and the cost to comply with increasing requirements has been absorbed by the dealers. HB 1233 would follow provisions in HB 3621 by Solomons, enacted in 2009, which raised the cap for the same documentary fee in the sale of automobiles and other motor vehicles. The finance commission would have the authority to review and set a reasonable fee that would reflect the true cost of processing documents and protect dealers and customers.

OPPONENTS SAY:

By removing the statutory limit on document fees, HB 1233 would place an additional burden on consumers through potentially higher fees or force them to complete the cumbersome paperwork themselves in an effort to avoid the higher fees.

NOTES:

The committee substitute differs from the bill as filed by:

- requiring the finance commission to set a maximum fee amount to replace the $50 cap on documentary fees;
- removing certain notice requirements and the process for the finance commission to determine the reasonableness of documentary fees.

SUBJECT: Changing when a pro se inmate could conduct a pre-lawsuit deposition

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth

0 nays

WITNESSES: For — None

Against — Michelle Smith, Texas Civil Rights Project

On — Sharon Howell, Texas Department of Criminal Justice; Christopher Lindsey, Attorney General

BACKGROUND: Civil Practice and Remedies Code, sec. 14.005(a) requires an inmate filing a court claim to provide proof that the inmate has exhausted the administrative remedies within the Texas Department of Criminal Justice (TDCJ) grievance system.

DIGEST: CSHB 2442 would change when an inmate without an attorney (pro se inmate) could conduct a pre-suit deposition. Before a court could grant a petition for pre-suit deposition, a pro se inmate would have to submit:

- an affidavit certifying that the inmate is not indigent;
- a certified copy of the inmate's trust fund account statement;
- proof that the inmate has exhausted all administrative remedies for anticipated claims; and
- a refundable bond for the filing fees.

If the inmate failed to provide these items, the court would deny the petition for a pre-suit deposition after giving reasonable notice to the parties. The inmate also would have to serve a copy of petition on the attorney general on or before the court filing date. If the pro se inmate had declared an inability to pay costs, a court could not grant the petition for a pre-suit deposition.

These provisions would prevail over the Texas Rules of Civil Procedure

if there were conflicting rules.

The bill would take effect September 1, 2013, and would apply only to petitions filed on or after that date.

SUPPORTERS SAY:

CSHB 2442 would help prevent frivolous and malicious pre-suit depositions. Currently, courts tend to grant an inmate's petition for a pre-suit deposition even if the inmate is not represented by an attorney (pro se). Courts receive very few of these petitions, but there is concern that pro se inmates use these depositions to harass Texas Department of Criminal Justice employees, among others. By requiring inmates to meet certain conditions, this bill would help ensure that pre-suit depositions were conducted only for legitimate claims.

This bill would not limit a pro se inmate's access to the court system. Pre-suit depositions are used to determine whether a potential claim has merit, and a pro se inmate with a legitimate grievance would not need these preliminary investigations. A pro se inmate still could proceed directly to litigation and a court, if necessary, could order depositions at that time. The increase to court caseloads would be negligible because courts receive so few of these petitions.

OPPONENTS SAY:

CSHB 2442 would be unnecessary because courts receive very few petitions for pre-suit depositions from pro se inmates. Moreover, by limiting a preliminary step, this bill could make more work for courts by increasing the number of cases that moved directly to litigation.

NOTES:

The committee substitute differs from the bill s filed in that it would require a court to deny a petition for a pre-suit deposition if a pro se inmate had declared an inability to pay costs or did not meet certain requirements, instead of requiring the court to determine if the potential claim was frivolous or malicious.

SUBJECT: Exempting certain sanitary sewer overflow from public notice requirement

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Ritter, Johnson, Ashby, D. Bonnen, Callegari, Keffer, T. King, Larson, Lucio, D. Miller

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Carol Batterton, Water Environment Association of TX and Texas Association of Clean Water Agencies; Foster Crowell, City of Corpus Christi; *(Registered, but did not testify:* Lindsey Baker, City of Denton; Heather Cooke, Texas Section of American Water Works Association (TAWWA); Addie Crimmins, City of Garland; Wil Galloway, City of Victoria; Anna Holmes, The City of Dallas; Mark Israelson, City of Plano; TJ Patterson, City of Fort Worth; Matt Phillips, Brazos River Authority; Charles Profilet, Southwest Water Co.; Dean Robbins, Texas Water Conservation Association; Brian Sledge, North Texas Municipal Water District; Frank Sturzl, City of Irving; Tom Tagliabue, City of Corpus Christi; Monty Wynn, Texas Municipal League*)*

Against — Eric Allmon, Greater Edwards Aquifer Alliance; *(Registered, but did not testify:* Ken Kramer, Sierra Club - Lone Star Chapter*)*

On — Robert Martinez, Texas Commission on Environmental Quality; *(Registered, but did not testify:* Susan Jablonski, Texas Commission on Environmental Quality*)*

BACKGROUND: Under Water Code, sec. 26.039, when an accidental discharge or spill occurs that may cause pollution, the responsible party is required to notify the Texas Commission on Environmental Quality (TCEQ) as soon as possible and no later than 24 hours after the occurrence. The individual's notice to the TCEQ must include the location, volume, and content of the discharge or spill. The individual running or responsible for the facility must notify appropriate local government officials and local media.

A sanitary sewer overflow (SSO) is a type of unauthorized discharge or

spill of untreated or partially treated wastewater from a collection system or its components (a manhole, lift station, or cleanout) before reaching a wastewater treatment facility.

DIGEST:

CSHB 824 would exempt an accidental sanitary sewer overflow from the requirement to notify the Texas Commission on Environmental Quality (TCEQ), local government officials, or local media if the overflow was 1,000 gallons or less and had been controlled or removed before it could enter state water and adversely affect a source of drinking water.

TCEQ, by rule, would specify the conditions under which notification provisions would apply.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 824 would establish a minimum reportable volume for sanitary sewer overflows, providing relief for public wastewater utilities from the reporting burden and more meaningful information to the public. According to TCEQ rule, a sanitary sewer overflow must be reported to the TCEQ regardless of volume, as federal and state regulations do not have a specified minimum reporting volume. An informal survey of Texas utilities indicates that a large percentage of spills reported are less than 1,000 gallons. The majority of overflows of this size do not reach waters of the state and do not cause an environmental impact. The requirement to report all sanitary sewer overflows regardless of amount creates a reporting burden for public utilities and an information management burden for TCEQ. It also has the potential to mislead the public into thinking that a serious public health and safety issue exists every time an unauthorized discharge is reported.

CSHB 824 would not eliminate the clean-up requirements for any spill, just the reporting requirements for those under a certain threshold that did not impact state waters or drinking water sources. The committee substitute would address concerns about the exemption being too broad. It would lower the volume threshold for reporting to 1,000 gallons from 1,500 gallons and limit the exemption to sanitary sewer overflows, rather than all spills. It would further narrow the scope by providing that the reporting exemption applied only as long as all three conditions were met: the spill or discharge was less than 1,000 gallons, it did not reach state waters, and it did not adversely affect drinking water.

While there are concerns that HB 824 would not make any real change to law because current statute states that TCEQ be notified of any accidental discharge or spill which causes or may cause pollution, TCEQ rule clearly states that any sanitary sewer overflow must be reported to the TCEQ regardless of volume. This has generated an enormous number of reports to which TCEQ does not have resources or capability to adequately respond, even though they have the authority to do so. HB 824 would focus the process on spills that had the most environmental impact.

The proposal in CSHB 824 is consistent with other states, such as California, North Carolina, and South Carolina, that have made sanitary sewer overflows reporting requirements meaningful and not excessive.

OPPONENTS SAY:

Current protocol enables the TCEQ to pinpoint issues of concern and address them before they become major problems. Under CSHB 824, a facility having problems with spills that were relatively low volume but occurred on an ongoing basis could escape the attention of the TCEQ until a bigger problem had developed. Recent studies have shown that many spills under the reportable threshold of 1,000 gallons were repeat occurrences. Any measure that might compromise the ability of the TCEQ to identify persistent problems and enforce compliance would be counterproductive.

The bill also would remove the requirement to report a spill below the threshold to local government officials and the local media, which could keep the public in the dark about potential problems at a facility.

CSHB 824 would leave it to the facility to make a determination of not only the volume of the sanitary sewer overflow but whether the spill had been "controlled or removed" and whether the sanitary sewer overflow had entered "water in the state" or "adversely affected a public or private source of drinking water." It would be dangerous to leave this as a judgment call, especially if the spill occurred in the recharge or contributing zone of an underground aquifer.

CSHB 824 would make TCEQ enforcement problematic since the TCEQ would be unaware of unauthorized discharges less than the designated threshold. This could interfere with the TCEQ's ability to determine compliance with the notification requirements and its ability to ensure that the discharge did not result in any impacts to human health, public safety, or the environment. If the threshold were exceeded and not reported, the

TCEQ would not be aware unless a complaint or situation arose. This could allow a facility to cover up a problem that should be brought to the TCEQ's attention.

Concerns that the current notification process involves a short time frame and a costly and cumbersome process could be addressed with changes to the reporting system rather than an elimination of the reporting requirement. An alternative could be an electronic system to facilitate reporting by the facility and review by the TCEQ. This could improve the accuracy of the records kept by the TCEQ. To help ease the burden on facilities, the notification could be done monthly.

OTHER OPPONENTS SAY:

The Water Code already specifies that an accidental discharge or spill that may cause pollution would have to be reported. If a discharge or spill has no potential to impact waters regulated by the TCEQ, then the reporting of such a discharge or spill is already not required, regardless of volume. CSHB 824 would not make any real change to current law.

NOTES:

The companion bill, SB 584 by Hegar, was referred to the Senate Natural Resources Committee on February 20.

The committee substitute differs from the bill as filed by:

- adding local government officials and local media to those who would not have to be notified;
- changing the volume of overflow from 1,500 gallons to 1,000 gallons;
- limiting the exemption to a spill of sanitary sewer overflow rather than from a wastewater treatment facility or works or collection facility; and
- adding criteria for notification exemption that the spill be controlled and not adversely affect a source of drinking water.

SUBJECT: Remedies for nonpayment of tolls for the use of toll projects

COMMITTEE: Transportation — committee substitute recommended

VOTE: 10 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

1 absent — Y. Davis

WITNESSES: For — John R. Ames, Dallas County Tax Office; Gerry Carrigan, North Texas Tollway Authority; C. Brian Cassidy, Alamo Regional Mobility Authority, Cameron County RMA, Camino Real RMA, Central Texas RMA, Grayson County RMA, and North East Texas RMA; Mike Heiligenstein, Central Texas RMA; Charles Reed, Dallas County; (*Registered, but did not testify:* Thomas Bamonte, North Texas Tollway Authority; David Garcia, Cameron County RMA; James Hernandez, Harris County and Harris County Toll Road Authority; Ed Martin, Lube Center Management doing business as Mobil 1 Lube Express; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County; Michael Nowels, Texas State Inspection Association; Craig Pardue, Dallas County; Carrie Rogers, North Texas Tollway Authority; Rider Scott, Dallas Regional Mobility Coalition; Frank Stevenson; Vic Suhm, Tarrant Regional Transportation Coalition)

Against — Terri Hall, Texas TURF; (*Registered, but did not testify:* Teresa Beckmeyer; Don Dixon; Pat Dossey; Dennis Edwards, Texasconservatives.org; Jeff Judson, San Antonio Tea Party; Bill Molina; Robert Morrow; Melanie Oldham; Deborah Parrish)

On — Phil Wilson, Texas Department of Transportation; (*Registered, but did not testify:* James Bass, TxDOT; Randy Elliston, Texas Department of Motor Vehicles; Michael Morris, North Central Texas Council of Governments)

BACKGROUND: Transportation Code, sec. 228.054, establishes a misdemeanor punishable by a fine of $250 or less for failing to pay a toll on a state highway toll project. Sec. 284.070 establishes a misdemeanor for failing to pay a toll on

certain county highway projects. Sec. 366.178 establisehs a misdemeanor for failing to pay a toll on roads operated by a regional tollway authority.

Transportation Code, ch. 284 applies only to a county that:

- has a population of 50,000 or more and borders the Gulf of Mexico or a bay or inlet opening into the gulf;
- has a population of two million or more;
- is adjacent to a county that has a population of two million or more; or
- borders the United Mexican States.

DIGEST:

Under CSHB 3048, registered vehicle owners who were issued at least two written notices of nonpayment and warnings related to 100 or more events of nonpayment within one year would be considered habitual violators. The bill would not apply to the Harris County Toll Road Authority or other counties acting under chapter 284, Transportation Code.

Remedies for habitual failure to pay tolls and fees. CSHB 3048 would allow toll project entities to prohibit a habitual violator from using a toll project if the entity provided notice at least 10 days before the prohibition. Under the bill, operating a motor vehicle on a toll project in violation of the prohibition would be a class C misdemeanor (maximum fine of $500) and a peace officer could impound the vehicle. After a final determination that a vehicle owner was a habitual violator, the toll project entity could cause the denial of vehicle registration through the county assessor-collector or the Texas Department of Motor Vehicles.

Notification of habitual violators. If a vehicle owner was a habitual violator, a toll project entity would have to:

- send written notice by first class mail to the vehicle owner;
- state in the notice the total number of events of nonpayment, the total amount due for tolls and fees, the date of the habitual violation determination, the person's right to request a hearing on the determination, and the procedure and time limit for requesting a hearing.

Hearings for a determination of habitual violation. Hearings would:

- be held by the justice of the peace;
- be conducted in a justice court in the county where 25 percent of the

events of nonpayment occurred;

- have to prove whether the registered owner was issued the appropriate notices of nonpayment containing at least 100 events of nonpayment within a year, not including nonpayment related to the vehicle being stolen or leased; and
- have to prove whether the total amount due for tolls and fees specified in the notices was not already paid in full.

If the justice of the peace found that the vehicle owner was a habitual violator, the determination would be final. It would be a defense to prosecution that a vehicle had been stolen at the time of the nonpayment.

If the justice of the peace did not find in the affirmative on each issue in the hearing, the toll project entity would rescind its determination that the registered owner was a habitual violator, but it still could collect the outstanding tolls and fees. A justice of the peace could use the administrative hearings process to expedite appeals. The vehicle owner would have 30 days to appeal the justice of the peace's decision for a trial *de novo*. A fee of up to $100 could be collected as court costs for determining whether a person was a habitual violator.

Publication of vehicle owner information. A toll project entity could publish information about the registered owners or lessees of nonpaying vehicles who owed past due and unpaid tolls or administrative fees, including their names, the city and state of their residence, the total number of events of nonpayment, and the total amount due for the tolls and administrative fees. This provision would not affect rental car companies or car dealers.

Payment plan. A toll project entity could agree on a repayment plan with the vehicle owner for the amount of outstanding tolls and fees. If the vehicle owner did not pay the outstanding balance due according to the plan within 30 days after receiving a written notice of failure to pay, the toll entity could file suit in district court to recover the outstanding balance as well as associated litigation expenses. The toll entity would file suit in the county in which its administrative offices were primarily located.

Vehicles registered outside the state. Owners of vehicles registered outside the state could be served either with a mailed notice or with a written notice of nonpayment in person, which would serve as a warning for further remedies. Government employees could serve this written

notice at international bridge crossings. For nonresidents, each failure to pay would be a separate, misdemeanor offense, punishable by a fine up to $250 in addition to the outstanding balance of tolls and fees owed.

For vehicles registered outside the state, it would be a defense to prosecution that:

- the owner of the vehicle had provided the toll project entity proof within 30 days of the notice of repayment that the person had leased the vehicle to another person at the time of nonpayment;
- the owner had reported the vehicle as stolen either before the nonpayment occurred or eight hours after the discovery of the theft.

Termination of determination of habitual violation. A determination that a vehicle owner was a habitual violator would end when the owner paid the total amount of tolls and fees due or the toll project entity determined that the amount had been otherwise addressed. The toll project entity would have to send notification of the change of determination to the vehicle owner, the county assessor-collector, and the Texas Department of Motor Vehicles, as appropriate, within seven days of the change.

The bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 3048 would hold drivers accountable for habitually failing to pay tolls by denying vehicle registration and prohibiting a violator's use of toll roads. Habitual violators are a detriment to the entire toll road system, potentially raising costs for other users by not paying their fair share. Thousands of drivers may rack up $10,000 each in unpaid tolls and administrative fees on Texas toll roads each year, with little accountability.

CSHB 3048 would give toll project entities the authority they otherwise would not have to keep habitual violators off the road by denying their vehicle registration or impounding their cars.

The bill would give violators ample notice to cure their violations and the opportunity to appeal the determination of a violation in front of an elected justice of the peace. An associated $100 fee would help cover court costs associated with the hearings, or a justice of the peace could choose to use the administrative hearings process to expedite appeals. While the courts may experience an initial increase in workload, the workload would level

out quickly.

By defining habitual violation as 100 events of nonpayment per year, the bill would target only those drivers who most egregiously failed to pay their tolls and would exclude any drivers who had received only a few erroneous bills. Publishing violators' names and addresses would make it easier for violators to find out if they were subject to a violation. The bill also would provide protections for vehicle owners, such as rental car companies, car dealerships, or owners whose cars had been stolen who were not driving the vehicle when an offense occurred. The bill would not affect the Harris County Toll Road Authority, which has its own effective system for settling toll violations.

By allowing toll project entities to set up payment plans, CSHB 3048 would give low-income drivers a way to pay off their accumulated unpaid tolls and fees through manageable payments.

OPPONENTS SAY:

CSHB 3048 would overload justice of the peace courts with hearings for nonpayment of tolls and fees. The $100 court cost fee would not be sufficient to help the courts handle the increase in workload and could make drivers wait up to a year before they could appeal their case in court.

CSHB 3048 would also unfairly penalize drivers who had received multiple erroneous bills resulting from an electronic error by making them go through the appeals process and would humiliate people by publishing their names and addresses.

OTHER OPPONENTS SAY:

The number of instances of unpaid tolls defining habitual violation should be set lower. CSHB 3048 would unfairly penalize low-income drivers by allowing people to amass thousands of dollars in unpaid tolls and fees before severe penalties would apply. Many people can't afford to pay off that much debt in a short period of time, even with a payment plan.

NOTES:

A similar bill, SB 1792 by Watson, was reported favorably by the House Transportation Committee on April 25.

The committee substitute differs from the bill as filed by

- making it the responsibility of the toll project entity, rather than the responsibility of the Texas Department of Transportation, to determine habitual violation, administer a payment plan, and notify

violators;

- bases habitual violation on the number of events of nonpayment rather than the number of days;
- adds defenses to prosecution for vehicles that were stolen or leased to another driver;
- adds a provision restricting a toll project entity from publishing information related to cars owned by a car rental company or car dealer;
- exempts counties acting under Chapter 284 of Transportation Code and
- adds remedies for nonpayment of tolls and fees by vehicle owners registered out of state;
- specifies that a hearing on the determination of habitual violation would be held in the county in which the toll collection facilities where at least 25 percent of the nonpayment events were located, not where a majority of the events of nonpayment were located'
- adds a 30-day deadline for the registered vehicle owner to petition the court for an appeal and a seven-day deadline for a toll project entity to notify a habitual violator of the termination of the determination;
- requires the authorized attorney in the county in which the toll project entity's administrative offices are primarily located to file suit to recover the outstanding balance of tolls and fees owed to the toll project entity, instead of the attorney general filing suit in Travis County;
- removes a provision in the original allowing peace officers to issue a criminal trespass ticket when an administrative decision authorizing the exercise of habitual violator remedies is in effect.

SUBJECT: Vesting the Lavaca County attorney with the duties of a district attorney

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

WITNESSES: For — John Stuart Fryer, Micah Harmon, and Tramer Woytek, Lavaca County; Heather McMinn, 25th Judicial District of Texas

Against — None

On — Robert Kepple, District and County Attorneys Association

BACKGROUND: Government Code, sec. 43.112 established the 25th Judicial District. Its elected felony prosecutor has jurisdiction in Gonzales, Guadalupe, and Lavaca counties.

The Professional Prosecutors Act, Government Code, ch. 46 ties the salary of elected prosecutors covered by the act to the salary of a state district judge, which is $125,000. To receive the higher salary, an elected prosecutor must give up his or her private civil practice.

DIGEST: HB 696 would remove Lavaca County from the list of counties that elect the felony prosecutor of the 25th Judicial District. The bill would grant the Lavaca County Attorney the duties and powers of a district attorney. The Lavaca County Attorney would be added to the Professional Prosecutors Act.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY: HB 717 would increase the efficiency of law enforcement in Lavaca County. The 25th Judicial District has seen a sharp rise in population and economic activity related to the development of oil and gas deposits in the Eagle Ford shale formation across South Texas. Guadalupe County, which houses the Judicial District's felony prosecutor in Seguin, is expanding the

most, as the city of San Antonio spreads east. The increase in population and the oil and gas boom has led to an increase in crime in the district.

The current prosecutor is too far away and too focused outside of Lavaca to fully attend to the county's needs. This has resulted in too many suspects released from the county jail after 90 days because no timely indictment has been made. Lavaca County saw an 81 percent increase in felony cases in fiscal 2012, a year in which it had 78 active felony cases. In comparison, Guadalupe County had 713 active cases in district courts, so the local felony prosecutor, as a matter of efficiency, must focus attention on Guadalupe County. Lavaca County does not have enough cases to merit full-time attention, and it is expensive for the prosecutors and investigators in Seguin to make the three-hour round trip to the Lavaca County courthouse in Halletsville. Having a local full-time felony prosecutor would improve efficiency and the speed with which cases were prosecuted, justifying the small additional cost in the fiscal note.

There is precedent for granting the county attorney the same duties as a district attorney. Lavaca County would be among 27 other counties in which a county attorney has been granted the authority to perform the duties of a district attorney.

The Legislature historically has added felony prosecutor offices to the Professional Prosecutors Act when the prosecutor has requested it. The exception was when the 82nd Legislature did not move two prosecutors into the act because of a lack of funding for spending increases. Since the state has seen a dramatic increase in revenue, it can afford to add the Lavaca County Attorney's Office to the Professional Prosecutors Act, especially with the corresponding benefits to law and order. Finally, there are counties with smaller felony dockets that have prosecutors under the professional prosecutor's act.

OPPONENTS SAY:

HB 717 would be an inefficient use of state and local funds. Lavaca County is too small to warrant its own felony prosecutorial staff. Including Lavaca County within the 25th Judicial District's prosecutorial resources is the most responsible use of public funds. According to the fiscal note, the bill would cost the state $184,334 in general revenue and $124,262 from the judicial fund through the biennium.

NOTES:

A related bill, HB 696, by Kleinschmidt, would remove Gonzales County from the 25th Judicial district and would vest its county attorney with the

powers and responsibilities of a district attorney. It was passed by the House on April 26.

CSSB 1 includes a rider in article 11 that would raise the annual salary of state district court judges by 10 percent to $137,500.

SUBJECT: Vacancies on a governing body in small municipalities

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez

0 nays

2 absent — Anchia, Sanford

WITNESSES: For — None

Against — None

BACKGROUND: Local Government Code, ch. 22 governs the aldermanic form of government in a type-A general-law municipality. Sec. 22.041(b) states that an alderman's office in a governing body is considered vacant if the alderman is absent for three consecutive meetings without obtaining a leave of absence for a reason other than sickness.

DIGEST: HB 2259 would amend Local Government Code, sec. 22.041 to state that, for the purpose of determining a vacancy due to consecutive absences, an alderman would be considered absent if he or she were not present at the adjournment of a meeting at which a quorum was established, unless the other members present unanimously voted to allow the alderman to withdraw.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply only to a meeting held on or after that date.

SUPPORTERS SAY: HB 2259 would ensure that city aldermen of small municipalities fulfilled their duties and did not thwart the ability of their towns to deal with important issues. Currently, small municipalities have little recourse against an alderman's absence other than bringing a lawsuit to remove the alderman or invoking the Local Government Code provision that removes a member from office following three consecutive, unexcused absences.

HB 2259 would close a loophole in the law that allows members to reach a quorum by appearing at a meeting and then immediately leaving, thereby not recording an absence. Such behavior in the Village of Vinton, as documented by a local news affiliate, has prevented the city council from dealing with serious issues. Litigation is an ineffective solution because it is costly and the legal process could last longer than a member's term.

Critics who fear that the bill would punish members with legitimate reasons to leave a city council meeting early should note that the bill would allow an alderman to be excused by unanimous vote of the other members.

OPPONENTS SAY:

HB 2259 would create a blanket provision affecting all small municipalities to correct a problem that exists only in a few dysfunctional city councils. The bill could have punitive, unintended consequences for some members with valid reasons to leave a meeting.

SUBJECT: Extending a Bexar County behavioral health pilot project for 10 years

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

1 nay — Laubenberg

WITNESSES: For — Elizabeth Federico, Frankie Lindsey, and Carmen Ozteris-Aguillar, The Center for Health Care Services; (*Registered, but did not testify*: Sherry Baily, Gilbert Gonzales and John Smith, The Center for Health Care Services, Mental Health Authority; Yolanda Cantu; Eileen Garcia, Texans Care for Children; Carrie Kroll, Texas Hospital Association; Katharine Ligon, Center for Public Policy Priorities; Joe Lovelace, Texas Council of Community Centers; Diana Martinez, TexProtects; Sandra Martinez, Methodist Healthcare Ministries; Seth Mitchell, Bexar County Commissioners Court)

Against — (*Registered, but did not* testify: Marissa Stewart, Texans for Accountable Government)

On — John Specia; (*Registered, but did not testify*: Angela Hobbs-Lopez, DSHS)

BACKGROUND: HB 1232 by Menendez, enacted by the 81st Legislature in the 2009 regular session, requires the Department of State Health Services (DSHS) and a Bexar County mental health authority to establish a local behavioral health intervention pilot project for children. This program, known as Bexar Cares, identifies at-risk children, connects families to services, and develops best practices. The project will expire on September 1, 2013.

Government Code, sec. 311.025(b), requires that amendments made to the same statute, during the same legislative session, and without reference to each other be harmonized so effect is given to each amendment. If the amendments are irreconcilable, the last to be enacted prevails.

DIGEST: HB 39 would extend until 2023 a Bexar County behavioral health intervention pilot project for children. It would require the local mental

health authority involved with the project to submit a report by December 1 of each even-numbered year.

Any other amendments made to HB 1232 by Menendez (81st Legislature, regular session) during this legislative session would have to be harmonized with HB 39's amendments. If the amendments were irreconcilable, this bill's amendments would prevail.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session (Aug. 26).

SUPPORTERS SAY:

HB 39 would extend the life of an innovative, effective behavioral health pilot project. Bexar Cares allows schools, state agencies, and the local mental health authority to share information and coordinate care, streamlining the identification and treatment process. The program has had success recognizing children with behavioral health issues, offering effective early interventions, and preventing school expulsion and incarceration. By connecting families to comprehensive, community-based services, the program reduces the risk that a child will be placed into foster care. By extending the program until 2023, this bill would enable the program to become solidly established in San Antonio and expand its range of services.

Bexar Cares adequately protects parental rights by requiring parental consent at nearly every stage of the program. Further, participation in Bexar Cares is not automatic – families must agree to be involved. And while some contend that the relatively new program should not be extended until 2023, the Legislature would receive a report every two years and could revoke the extension, if needed.

As with legislation enacted in previous sessions authorizing the program, the Legislative Budget Board (LBB) estimates no significant fiscal impact to the state from HB 39. Moreover, the program could save the state money by preventing children from entering the foster-care system.

OPPONENTS SAY:

HB 39 would not adequately protect parental rights. Before being continued, the program should strengthen parental consent procedures by clarifying that families must "opt in" to the program. Further, there is currently not enough evidence to warrant a 10-year extension. Until the program has more outcome data, it should be reviewed and renewed every

two years.

NOTES: The companion bill, SB 294 by Van De Putte, was reported favorably by the House Committee on Public Health on April 19.

SUBJECT: Reducing number of members of Texas Historical Commission

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira, Smithee

0 nays

3 absent — Giddings, Hilderbran, Sylvester Turner

WITNESSES: For — August Harris, Texas Historical Commission

Against — None

On — Terry Colley, Texas Historical Commission

BACKGROUND: The Texas Historical Commission has 17 members appointed by the governor with the advice and consent of the Senate. These members serve six-year staggered terms with about a third of their terms expiring February 1 of each odd-numbered year. Commission members must be state citizens with a demonstrated interest in historical or archeological heritage preservation, with a geographic balance. The commission is charged with providing leadership and coordinating services in archeological and historical preservation.

DIGEST: CSHB 408 would reduce the size of the Texas Historical Commission from 17 members to nine, with exactly a third of the members' terms expiring February 1 of each odd-numbered year.

Four positions set to expire on February 1, 2019, would be abolished on September 1, 2013. The bill would gradually phase out the rest of the eliminated commissioner positions. Two positions with terms set to expire on February 1, 2015, would be abolished on that date. Two positions with terms set to expire on February 1, 2017, would expire on that date.

For commissioners with terms beginning February 1, 2015, the governor would appoint a member whose term would expire on February 1, 2019, and two members whose terms expire February 1 2021. For

commissioners with terms beginning February 1, 2017, the governor would appoint one member whose term would expire on February 2, 2021, and three members whose terms would expire February 1, 2023. The governor would indicate as soon as possible which positions would be abolished and inform the presiding officer of the commission.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

The Texas Historical Commission is too large. Many other governor-appointed boards overseeing comparable state agencies have only nine members. Eliminating eight commissioner positions could further engage the remaining nine members. Reducing the size of the commission would help it achieve a quorum when needed and save the state money by reducing travel expenses paid to commissioners. As a practical matter, finding meeting space for 17 commissioners is difficult and staff members must use time and resources to prepare materials for each member.

The only requirements to serve on the Historical Commission are that the member be a state citizen with a demonstrable interest in archeological or historical heritage. All commissioners are therefore at-large members, and this bill would not change the balance of the commission. The Historical Commission still could draw on the expertise of specialists across the state who were not commissioners.

OPPONENTS SAY:

The members of the Texas Historical Commission provide policy direction to the agency and lend their expertise to identify and preserve archeological and historical items of value. Reducing the size of the Historical Commission could eliminate a source of valuable expertise.

NOTES:

The companion bill, SB 283 by Estes, passed the Senate 31-0 on March 13 and was reported favorably by the House State Affairs Committee on April 17.

The committee substitute differs from the bill as filed by changing the abolishment date for several of the commissioners and specifying direction to the governor in appointing replacement members.

SUBJECT: Setting specific continuing education requirements for educators

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Deshotel, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

2 absent — J. Davis, Dutton

WITNESSES: For — Clayton Travis, Texans Care for Children; (*Registered, but did not testify:* David Anderson, Arlington ISD Board of Trustees; Priscilla Aquino-Garza, Stand for Children Texas; Jennifer Bergland, Texas Computer Education Association; Miryam Bujanda, Methodist Healthcare Ministries; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Monty Exter, Association of Texas Professional Educators; Eileen Garcia and Josette Saxton, Texans Care for Children; Wendy Reilly, TechAmerica; Geoff Wurzel, TechNet)

Against — None

On — Melva V Cardenas, Texas Association of School Personnel Administrators; Ted Melina Raab, Texas AFT; (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: Education Code, ch. 21 requires the State Board for Educator Certification (SBEC) to establish a process of continuing professional education (CPE) training for educators. Types of educators include classroom teachers, superintendents, principals, school counselors, and librarians. Classroom teachers must obtain 150 hours of CPE and principals and counselors must obtain 200 hours of CPE over a five-year period to renew their certifications.

DIGEST: CSHB 642 would require CPE requirements for any educator certified by SBEC to be linked to areas identified in that person's appraisal as needing improvement. The bill also would require that a percentage of continuing professional education, not to exceed 25 percent in a five-year period, include specific areas of training for classroom teachers, principals, and

counselors.

Training areas for classroom teachers would include:

- collecting and analyzing information that would improve effectiveness in the classroom;
- recognizing early warning indicators that a student could be at risk of dropping out of school;
- integrating technology into classroom instruction;
- educating diverse student populations; and
- increasing knowledge of the subject area taught by the educator.

Training areas for principals would include:

- effective and efficient management;
- recognizing early warning indicators that a student may be at risk of dropping out;
- integrating technology into campus curriculum and instruction;
- educating diverse student populations; and
- providing instructional leadership.

Training areas for counselors would include:

- assisting students in developing high school graduation plans;
- implementing dropout prevention strategies; and
- informing students about career opportunities and college admissions, financial aid resources, and application procedures

Current educators would not be required to comply with the percentage requirements of the bill for any requirements period that ended before January 1, 2017. They would not have to comply with the requirement that training be linked to areas in need of improvement for any requirements period that ended before January 1, 2016.

CSHB 642 would take effect September 1, 2013, and would apply beginning with the 2014-2015 school year.

SUPPORTERS SAY:

CSHB 642 would improve the CPE process by requiring training for educators in areas crucial to 21st century learning. Currently, almost all CPE requirements are permissive. Educators are not required to take training in important areas and may fulfill CPE requirements without meaningful training that improves classroom instruction.

CSHB 642 would improve classroom effectiveness and student achievement by requiring educators to learn about making data-driven decisions, identifying at-risk students, integrating technology, and working with diverse populations. Requiring education certificate holders to fulfill CPE requirements linked to their areas of deficiency would help educators improve their instruction.

Because these requirements are small, the SBEC still would be left with a great deal of autonomy to set its own guidelines for the profession and educators would maintain significant flexibility in choosing their CPE.

OPPONENTS SAY:

CSHB 642 would interfere unnecessarily with the CPE process by prescribing specific professional development requirements in statute, taking authority away from the education profession to self-regulate. As professionals, educators should be able to establish their own curriculum with guidance from their own licensing agency, the SBEC.

Requiring that CPE courses be linked to an educator's areas of needed improvement would be problematic because educator evaluations are confidential. SBEC would not have access to the evaluations and could not enforce this requirement. Also, SBEC rules already encourage educators to identify CPE activities based on the results of their annual appraisal. Verifying that educators met the requirements in CSHB 642 could be burdensome for the educators and for SBEC.

NOTES:

The committee substitute differs from the bill as filed by:

- requiring not more than 25 percent of the CPE credits include the specified areas for classroom teachers, principals, and counselors; and
- including mental health disorders in the population of students with disabilities.

SUBJECT: Exempting school booster clubs from paying certain sales taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For — David Rac and Wattine Rac, La Marque Athletic Booster Club; Drew Russell, McNeil Mavericks Booster Club; (*Registered, but did not testify:* Ellen Arnold, Texas PTA)

Against — (*Registered, but did not testify:* Mark Israelson, City of Plano; TJ Patterson, City of Fort Worth)

On — Brad Reynolds, Texas Comptroller of Public Accounts

BACKGROUND: Food products for human consumption are exempt from state sales-and-use taxes under Tax Code, sec. 151.314. Food products, meals, soft drinks, and candy are exempt from sales taxes if they are served during the regular school day by a:

- public or private school;
- school district;
- student organization;
- parent-teacher association under an agreement with an elementary or secondary school; or
- parent-teacher association during a fund-raising sale that does not benefit an individual.

DIGEST: HB 697 would exempt from sales-and-use taxes "school spirit merchandise" and food products, meals, soft drinks, and candy sold by a booster club or other school support organization formed to support a school or school district, provided:

- the merchandise was sold under an agreement with the school

during the regular school day or during an event sponsored or sanctioned by a school or district; and

- the proceeds from the sales benefitted the school or district.

The bill would take effect September 1, 2013, and would apply to any tax liability after that date.

SUPPORTERS SAY:

HB 697 would support Texas schools by granting a sales tax exemption to booster clubs that raised funds for schools through sales of concessions and merchandise.

Current law exempts sales taxes for schools, student organizations, and parent-teacher associations selling food products during the school day, but not for school booster clubs. While some booster clubs have 501(c)(3) nonprofit status, many are hesitant to go through the registration process and do not want to pay the costs necessary (estimated between about $1,000 and $1,500) to achieve formal nonprofit status. These non-tax-exempt booster clubs now are required to collect sales taxes on all goods sold at events and remit the taxes to the comptroller. Further, because they do not have a tax exemption, they already pay sales taxes once on any goods they purchase to resell for the benefit of the school.

The administrative inconvenience of collecting and reporting sales taxes is sufficient to discourage many who otherwise would like to be involved in organizing and assembling funds for the school. Even if the comptroller has not been enforcing this provision, its presence on the books breeds a sense of reluctance among those who would otherwise be involved in supporting their school through selling concessions.

The recent environment of fiscal austerity highlights the need to remove barriers to individuals who wish to assume an active role in supporting their schools. Allowing booster clubs to sell school spirit merchandise and concessions during the normal course of the school day or at a school event would ensure the proceeds from these activities went directly to schools.

HB 697 would not change existing tax exemptions for food products, soft drinks, and candy. It simply would extend these exemptions to booster clubs. The debate on nutrition in schools is an important one, but is not the subject of this bill.

OPPONENTS SAY:

HB 397 would carve out a sales tax exemption for certain groups selling goods for certain purposes. Singling out one group for a tax exemption, event for a meritorious purpose, raises issues of uniformity in taxation. There are a wide variety of groups selling goods for lofty purposes that would not be included in this exemption.

The comptroller has stated that booster clubs, whether registered as a nonprofit or not, are not subject to sales taxes for selling food products at school-related events. If such clubs want to sell taxable items, they can register as a nonprofit, which would allow them to hold up to two tax-free sales or auctions each calendar year. The nonprofit registration requirement is important to ensuring a level of accountability for groups that go beyond selling concessions.

The bill also would reinforce and expand the current sales tax exemption for candy and soft drinks sold during the course of the day or at events to benefit schools. This would contribute to existing concerns about the quality of nutrition available in schools. Making candy and soft drinks sales tax free could send the message that such products were endorsed by schools and parents for consumption by children.

While HB 397 is well intended, its sales-and-use tax exemptions would cost the state about $1.9 million in fiscal 2014-15, according to the Legislative Budget Board (LBB), with cities, counties and other units of local government also projected to lose revenue. With the budgets of state and local governments already stretched, now is not the time to propose nonessential tax exemptions.

OTHER OPPONENTS SAY:

The definition of "school spirit merchandise," which the bill defines as "tangible personal property intended to be worn or displayed as a show of support" for a school could encompass a broad range of items. Placing a school logo on a variety of items, under this definition, could qualify them for a sales tax exemption under the bill. This language opens up the tax exemption to all kinds of creative marketing and sales activities. The definition should be reined in to apply more tightly to school team apparel and other items of little market value.

NOTES:

The LBB projects that HB 697 would result in a negative impact of about $1.9 million to general revenue related funds for fiscal 2014-15 due to the bill's sales-and-use tax exemptions. The LBB estimates the fiscal impact to local governments in fiscal 2014-15 as follows:

- a loss of $352,000 to cities;
- a loss of $124,000 to transit authorities; and
- a loss of $57,000 to counties.